

A BILL

To provide Federal managers with tools and flexibility in areas such as personnel, budgeting, property management and disposal, and for other purposes.

Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled.

SECTION 1. SHORT TITLE; TABLE OF CONTENTS

(a) SHORT TITLE. -This Act may be cited as the "Managerial Flexibility Act of 2001".

(b) TABLE OF CONTENTS. - The table of contents for this Act is as follows.

Sec. 1. Short title; Table of Contents.

TITLE I - FEDERAL EMPLOYEE MANAGEMENT REFORMS

SUBTITLE A - FEDERAL EMPLOYMENT RESTRUCTURING ASSISTANCE

Sec. 101. Voluntary separation incentives.
Sec. 102. Existing authorities valid until expiration.
Sec. 103. Effective date.

SUBTITLE B - FEDERAL EMPLOYEE VOLUNTARY EARLY RETIREMENT

AMENDMENTS

Sec. 111. Voluntary early retirement authority.

SUBTITLE C - CIVIL SERVICE RECRUITMENT AND RETENTION INCENTIVES

Sec. 121. Recruitment, relocation, and retention bonuses.
Sec. 122. Academic degree training.
Sec. 123. Professional credentials.
Sec. 124. Correction of pay administration problems.
Sec. 125. Civil Service Retirement System computations for part-time service.
Sec. 126. Promotional items received pursuant to official travel.

- Sec. 127. Student volunteer transit subsidy.
Sec. 128. Effective date.

SUBTITLE D - PROMOTION OF RESULTS-ORIENTED PERFORMANCE

EVALUATION AND COMPENSATION FOR SENIOR EXECUTIVES

- Sec. 131. Cap on total annual compensation.
Sec. 132. Repeal of senior executive recertification.
Sec. 133. Annual leave enhancements.
Sec. 134. Effective date.

SUBTITLE E - FEDERAL HUMAN RESOURCES MANAGEMENT INNOVATIONS

- Sec. 141. Project management and alternative personnel systems.
Sec. 142. Effective date.

SUBTITLE F - FEDERAL HUMAN RESOURCES HIRING FLEXIBILITY

- Sec. 151. Employment flexibility amendments.

TITLE II - BUDGETING AND MANAGING FOR RESULTS: FULL FUNDING FOR

FEDERAL RETIREE COSTS

SUBTITLE A - ACCRUAL FUNDING OF PENSIONS AND RETIREMENT PAY FOR

FEDERAL EMPLOYEES

- Sec. 201. Civil Service Retirement System.
Sec. 202. Central Intelligence Agency Retirement and Disability System.
Sec. 203. Foreign Service Retirement and Disability System.
Sec. 204. Public Health Service Commissioned Corps Retirement System.
Sec. 205. National Oceanic and Atmospheric Administration Commissioned Officer Corps Retirement System.
Sec. 206. Coast Guard Military Retirement System.

SUBTITLE B - ACCRUAL FUNDING OF POST-RETIREMENT HEALTH BENEFITS

COSTS FOR FEDERAL EMPLOYEES

- Sec. 211. Federal Employees Health Benefits Fund.
- Sec. 212. Uniformed Services Health Benefits for Retirees.
- Sec. 213. Effective date.

TITLE III - FEDERAL PROPERTY ASSET MANAGEMENT REFORMS

- Sec. 301. Definitions.

SUBTITLE A - LIFE CYCLE PLANNING AND MANAGEMENT

SUBTITLE B - ENHANCED AUTHORITIES FOR REAL PROPERTY ASSET MANAGEMENT

- Sec. 311. Enhanced asset management tools.
- Sec. 312. Repeal of section 321 of the Federal Property and Administration Services Act.
- Sec. 313. Disposal of surplus property.

SUBTITLE C - INCENTIVES FOR REAL AND PERSONAL PROPERTY

MANAGEMENT IMPROVEMENT

- Sec. 321. Proceeds from transfer or disposition of property.
- Sec. 322. Relationship to other agencies' authorities to use disposal proceeds.
- Sec. 323. Impact on other authorities to use disposal proceeds.
- Sec. 324. Using a share of sale proceeds to maintain historic Treasury receipts.

SUBTITLE D - STREAMLINED AND ENHANCED DISPOSAL AUTHORITIES

- Sec. 331. Including nonprofit organizations as eligible donees.
- Sec. 332. Elimination of certain negotiated sale requirements.
- Sec. 333. Exchange and sale of personal property.
- Sec. 334. Expansion of abandonment authority.
- Sec. 335. Clarifying certain donation authorities.
- Sec. 336. Streamlining consideration of surplus real property for homeless assistance.

SUBTITLE E - MISCELLANEOUS

- Sec. 341. Scope and construction.
- Sec. 342. Severability.

- Sec. 343. No waiver.
Sec. 344. Agency discretion.
Sec. 345. Effective date.
Sec. 346. Report of the Comptroller General.

1 **TITLE I - FEDERAL EMPLOYEE MANAGEMENT REFORMS**

2 **SUBTITLE A - FEDERAL EMPLOYMENT RESTRUCTURING ASSISTANCE**

3 **Sec. 101. Voluntary separation incentives.**

4 (a) Chapter 35 of title 5, United States Code, is amended—

5 (1) by amending the chapter title to read as follows:

6 "CHAPTER 35 – RETENTION PREFERENCE, VOLUNTARY SEPARATION INCENTIVE
7 PAYMENTS, RESTORATION, AND REEMPLOYMENT";

8 (2) by inserting after subchapter I a new subchapter II to read as follows:

9 "SUBCHAPTER II – VOLUNTARY SEPARATION INCENTIVE PAYMENTS

10 **"§3521. Definitions**

11 "For the purpose of this subchapter—

12 "(1) 'agency' means an Executive agency as defined by section 105; and

13 "(2) 'employee' means an employee as defined by section 2105 employed by an agency

14 and an individual employed by a county committee established under section 8(b)(5) of the Soil
15 Conservation and Domestic Allotment Act (16 U.S.C. 590h(b)(5)) who—

16 "(A) is serving under an appointment without time limitation; and

17 "(B) has been currently employed for a continuous period of at least 3 years;

18 but does not include—

1 "(i) a reemployed annuitant under subchapter III of chapter 83 or
2 chapter 84 or another retirement system for employees of the Government;

3 "(ii) an employee having a disability on the basis of which such
4 employee is or would be eligible for disability retirement under subchapter III of
5 chapter 83 or chapter 84 or another retirement system for employees of the
6 Government;

7 "(iii) an employee who is in receipt of a decision notice of involuntary
8 separation for misconduct or unacceptable performance;

9 "(iv) an employee who has previously received any voluntary separation
10 incentive payment from the Federal Government under this subchapter or any
11 other authority;

12 "(v) an employee covered by statutory reemployment rights who is on
13 transfer employment with another organization; or

14 "(vi) any employee who, during the 24-month period preceding the
15 employee's date of separation, received and did not repay a recruitment or
16 relocation bonus under section 5753 or who, within the 12-month period
17 preceding the employee's date of separation, received and did not repay a
18 retention allowance under section 5754, or who, within the 36 month period
19 preceding the employee's date of separation, received and did not repay funds
20 provided for student loan repayment under section 5379, unless the paying
21 agency has waived its right of recovery of those funds.

1 **"§3522. Agency plans; approval**

2 "(a) The head of each agency, prior to obligating any resources for voluntary separation
3 incentive payments, shall submit to the Director of the Office of Management and Budget a plan
4 outlining the intended use of such incentive payments that provides such information as the Director may
5 require, including the information specified in subsection (b).

6 "(b) The agency's plan under subsection (a) shall include—

7 "(1) the positions and functions to be reduced or eliminated;

8 "(2) a description of which categories of employees will be offered incentives;

9 "(3) the time period during which incentives may be paid;

10 "(4) the number and amounts of voluntary separation incentive payments to be offered;

11 and

12 "(5) a description of how the agency will operate without the eliminated positions and
13 functions.

14 "(c) The Director of the Office of Management and Budget shall review each agency's plan and
15 may condition the Director's approval of the plan upon the agency head's acceptance of modifications.

16 A plan under this section may not be implemented without the approval of the Director, and, upon an
17 agency head's request, the Director may approve for implementation changes to a plan previously
18 approved by the Director.

19 **"§3523. Authority to provide voluntary separation incentive payments**

20 "(a) A voluntary separation incentive payment under this subchapter may be paid to an
21 employee only as provided in the agency's plan established under section 3522.

1 "(b) A voluntary incentive payment—

2 "(1) shall be offered to agency employees on the basis of organizational unit,
3 occupational series or level, geographic location, specified periods during which eligible
4 employees may elect a voluntary separation incentive payment, skills, knowledge, or other such
5 job related factors, or a combination of such factors;

6 "(2) shall be paid in a lump sum after the employee's separation;

7 "(3) shall be equal to the lesser of—

8 "(A) an amount equal to the amount the employee would be entitled to receive
9 under section 5595(c) if the employee were entitled to payment under such section
10 (without adjustment for any previous payment made); or

11 "(B) an amount determined by the agency head, not to exceed \$25,000;

12 "(4) may be made only in the case of an employee who voluntarily separates (whether
13 by retirement or resignation) under the provisions of this subchapter;

14 "(5) shall not be a basis for payment, and shall not be included in the computation, of
15 any other type of Government benefit;

16 "(6) shall not be taken into account in determining the amount of any severance pay to
17 which the employee may be entitled under section 5595, based on any other separation; and

18 "(7) shall be paid from appropriations or funds available for the payment of the basic
19 pay of the employee.

20 "**§3524. Effect of subsequent employment with the Government**

21 "(a) An individual who has received a voluntary separation incentive payment under this

1 subchapter and accepts any employment for compensation with the Government of the United States
2 (other than the legislative branch) within five years after the date of the separation on which the payment
3 is based shall be required to pay, prior to the individual's first day of employment, the entire amount of
4 the incentive payment to the agency that paid the incentive payment.

5 "(b)(1) If the employment under this section is with an agency (other than the General
6 Accounting Office), the United States Postal Service, or the Postal Rate Commission, the Director of
7 the Office of Personnel Management may, at the request of the head of the agency, waive the
8 repayment if the individual involved possesses unique abilities, or, in the case of an emergency involving
9 a direct threat to life or property, the individual has skills directly related to resolving the emergency and
10 will serve on a temporary basis only so long as that individual's services are made necessary by the
11 emergency.

12 "(2) If the employment under this section is with the judicial branch, the Director of the
13 Administrative Office of the United States Courts may waive the repayment if the individual involved
14 possesses unique abilities and is the only qualified applicant available for the position.

15 "(c) Employment under a personal services contract with the Government of the United States
16 (other than the legislative branch) is included in the term 'employment' with respect to subsection (a),
17 but is excluded with respect to subsection (b).

18 **"§3525. Reduction of agency employment levels**

19 "(a) The total number of funded employee positions in the agency shall be reduced by one
20 position for each vacancy created by the separation of any employee who has received, or is due to
21 receive, a voluntary separation incentive payment under this subchapter. For the purpose of this

1 subsection, positions shall be counted on a full-time equivalent basis.

2 "(b) The Director of the Office of Management and Budget shall monitor the agency and take
3 any action necessary to ensure that the requirements of this section are met.

4 "(c) At the request of the head of an agency, the Director of the Office of Management and
5 Budget may waive application of subsection (a) if the Director determines that the agency plan required
6 by section 3522 satisfactorily demonstrates downsizing or other restructuring within the agency would
7 produce a cost-effective result.

8 **"§3526. Regulations**

9 "The Director of the Office of Personnel Management, with the concurrence of the Director of
10 the Office of Management and Budget, may prescribe such regulations as may be necessary to
11 implement the provisions of this subchapter."; and

12 (3) in the table of sections by striking the item relating to subchapter II and the item
13 relating to section 3551 and inserting in its place the following:

14 **"SUBCHAPTER II – VOLUNTARY SEPARATION INCENTIVE PAYMENTS**

15 "3521. Definitions.

16 "3522. Agency plans; approval.

17 "3523. Authority to provide voluntary separation incentive payments.

18 "3524. Effect of subsequent employment with the Government.

19 "3525. Reduction of agency employment levels.

20 "3526. Regulations."

21 (b) The Director of the Administrative Office of the United States Courts may, by regulation,

1 establish a program substantially similar to the program established by subsection (a) for individuals
2 serving in the judicial branch. Waivers authorized with respect to agencies by section 3525 of title 5,
3 United States Code, as enacted by subsection (a), shall, with respect to entities of the judicial branch,
4 be made by the Director of the Administrative Office of the United States Courts.

5 **Sec. 102. Previously enacted voluntary separation incentives.**

6 An agency head that has authority, under a statute enacted before the date of enactment of the Act, to
7 make voluntary separation incentive payments, may continue to offer voluntary separation incentives
8 under that statute in accordance with its terms and amendments.

9 **Sec. 103. Effective date.**

10 This subtitle and the amendments made by this subtitle shall take effect 60 days after the date of
11 enactment.

12 **SUBTITLE B - FEDERAL EMPLOYEE VOLUNTARY EARLY**
13 **RETIREMENT AMENDMENTS**

14 **Sec. 111. Voluntary early retirement authority.**

15 (a) Title 5, United States Code, is amended—

16 (1) by amending section 8336(d)(2) to read as follows:

17 "(2)(A) has been employed continuously, by the agency in which the employee is
18 serving, for at least the 31-day period ending on the date on which such agency requests the
19 determination referred to in subparagraph (D);

20 "(B) is serving under an appointment that is not time limited;

21 "(C) is not in receipt of a decision notice of involuntary separation for misconduct or

1 unacceptable performance;

2 "(D) is separated from the service voluntarily during a period in which, as determined
3 by the Office of Personnel Management (upon request of the agency) under regulations
4 prescribed by the Office–

5 "(i) such agency (or, if applicable, the component in which the employee is
6 serving) is undergoing delayering, reorganization, reduction in force, or a transfer of
7 function, or other workforce restructuring (or shaping); and

8 "(ii) employees serving in such agency (or component) are likely to be–

9 "(I) separated;

10 "(II) subject to an immediate reduction in the rate of basic pay (without
11 regard to subchapter VI of chapter 53, or comparable provisions); or

12 "(III) identified as being in positions which are becoming surplus or
13 excess to the agency's future ability to carry out its mission effectively; and

14 "(E) as determined by the agency under regulations prescribed by the Office, is within
15 the scope of the offer of voluntary early retirement, which may be made on the basis of–

16 "(i) one or more organizational units;

17 "(ii) one or more occupational series or levels;

18 "(iii) one or more geographical locations;

19 "(iv) specific window periods;

20 "(v) skills, knowledge, or such other similar job related factors; or

21 "(vi) any appropriate combination of such factors;"; and

1 (2) by amending section 8414(b)(1)(B) to read as follows:

2 "(B)(i) has been employed continuously, by the agency in which the employee is
3 serving, for at least the 31-day period ending on the date on which such agency
4 requests the determination referred to in clause (iv);

5 "(ii) is serving under an appointment that is not time limited;

6 "(iii) is not in receipt of a decision notice of involuntary separation for
7 misconduct or unacceptable performance;

8 "(iv) is separated from the service voluntarily during a period in which, as
9 determined by the Office of Personnel Management (upon request of the agency) under
10 regulations prescribed by the Office—

11 "(I) such agency (or, if applicable, the component in which the
12 employee is serving) is undergoing delayering, reorganization, reduction in
13 force, or transfer of function, or other workforce restructuring (or shaping); and

14 "(II) employees serving in such agency (or component) are likely to be—

15 "(aa) separated;

16 "(bb) subject to an immediate reduction in the rate of basic pay
17 (without regard to subchapter VI of chapter 53, or comparable
18 provisions); or

19 "(cc) identified as being in positions which are becoming surplus
20 or excess to the agency's future ability to carry out its mission
21 effectively; and

1 "(v) as determined by the agency under regulations prescribed by the Office, is
2 within the scope of the offer of voluntary early retirement, which may be made on the
3 basis of—

4 "(I) one or more organizational units;

5 "(II) one or more occupational series or levels;

6 "(III) one or more geographical locations;

7 "(IV) specific window periods;

8 "(V) skills, knowledge, or such other similar job related factors; or

9 "(VI) any appropriate combination of such factors;"

10 (b) Section 7001 of Public Law 105-174 (112 Stat. 91), as amended by section 651
11 of Public Law 106-58 (113 Stat. 480), is repealed.

12 **SUBTITLE C- CIVIL SERVICE RECRUITMENT AND RETENTION INCENTIVES**

13 **Sec. 121. Recruitment, relocation, and retention bonuses.**

14 (a) Chapter 57 of title 5, United States Code, is amended—

15 (1) by amending sections 5753 and 5754 to read as follows:

16 **"§5753. Recruitment and relocation bonuses**

17 "(a)(1) The Office of Personnel Management may authorize the head of an agency to pay a
18 bonus to an individual appointed or moved to a position that is likely to be difficult to fill in the absence
19 of such a bonus, if the individual—

20 "(A)(i) is newly appointed as an employee of the Federal Government; or

21 "(ii) is currently employed by the Federal Government and moves to a new position in

1 the same geographic area under circumstances described in regulations of the Office; or

2 "(B) is currently employed by the Federal Government and must relocate to accept a
3 position stationed in a different geographic area.

4 "(2) Except as provided by subsection (g), a bonus may be paid under this section only to an
5 employee covered by the General Schedule pay system established under subchapter III of chapter 53.

6 "(b)(1) Payment of a bonus under this section shall be contingent upon the employee entering
7 into a written service agreement to complete a period of employment with the agency, not to exceed
8 four years. The Office may, by regulation, prescribe a minimum service period.

9 "(2) The agreement shall set forth the length of the required service period, the amount of the
10 bonus, the method of payment, and other terms and conditions under which the bonus is payable,
11 subject to subsections (c) and (d) and regulations of the Office. The terms and conditions for paying a
12 bonus, as specified in the service agreement, shall include the conditions under which the agreement
13 may be terminated before the agreed-upon service period has been completed and the effect of the
14 termination.

15 "(3) The agreement shall be made effective upon employment with the agency or movement to
16 a new position or geographic area, as applicable, except that a service agreement with respect to a
17 recruitment bonus may be made effective at a later date under circumstances described in regulations of
18 the Office, such as when there is an initial period of formal basic training.

19 "(c)(1) Except as provided in subsection (d), a bonus under this section shall not exceed 25
20 percent of the annual rate of basic pay of the employee at the beginning of the service period multiplied
21 by the number of years (or fractions thereof) in the service period, not to exceed four years.

1 "(2) A bonus under this section may be paid as an initial lump sum, in installments, as a final
2 lump sum upon the completion of the full service period, or in a combination of these forms of payment.

3 "(3) A bonus under this section is not part of the basic pay of an employee for any purpose.

4 "(4) Under regulations of the Office, a recruitment bonus under this section may be paid to an
5 eligible individual before he or she enters on duty.

6 "(d) The Office may authorize the head of an agency to waive the limitation in subsection (c)(1)
7 based on a critical agency need, subject to regulations prescribed by the Office. Under such a waiver,
8 the amount of the bonus may be up to 50 percent of the employee's annual rate of basic pay at the
9 beginning of the service period multiplied by the number of years (or fractions thereof) in the service
10 period, not to exceed 100 percent of the employee's annual rate of basic pay at the beginning of the
11 service period.

12 "(e) The Office shall require that, before paying a bonus under this section, an agency shall
13 establish a plan for paying recruitment bonuses and a plan for paying relocation bonuses, subject to
14 regulations prescribed by the Office.

15 "(f) The Office shall prescribe such regulations as it considers necessary for the administration
16 of this section, including regulations governing the repayment of a recruitment bonus in appropriate
17 circumstances when the agreed-upon service period has not been completed. "(g)(1) At the request
18 of the head of an Executive agency, the Office may extend coverage under this section to categories of
19 employees within the agency who otherwise would not be covered by this section.

20 "(2) The Office shall not extend coverage to the head of an Executive agency, including an
21 Executive agency headed by a board or other collegial body composed of two or more individual

1 members.

2 "(h) For purposes of this section, 'employee' has the meaning given that term by section 2105,
3 except that such term also includes an employee described in subsection (c) of such section.

4 **"§5754. Retention bonuses**

5 "(a) The Office of Personnel Management may authorize the head of an agency to pay a
6 retention bonus to an employee, subject to regulations prescribed by the Office, if–

7 "(1) the unusually high or unique qualifications of the employee or a special need of the
8 agency for the employee's services makes it essential to retain the employee; and

9 "(2) the agency determines that, in the absence of a retention bonus, the employee
10 would be likely to leave–

11 "(A) the Federal service; or

12 "(B) for a different position in the Federal service under conditions described in
13 regulations of the Office.

14 "(b) The Office may authorize the head of an agency to pay retention bonuses to a group of
15 employees in one or more categories of positions in one or more geographic areas, subject to the
16 requirements of subsection (a)(1) and regulations prescribed by the Office, if there is a high risk that a
17 significant portion of employees in the group would be likely to leave in the absence of retention
18 bonuses.

19 "(c) Except as provided in subsection (i), a bonus may be paid only to an employee covered by
20 the General Schedule pay system established under subchapter III of chapter 53.

21 "(d)(1) Payment of a retention bonus is contingent upon the employee entering into a written

1 service agreement with the agency to complete a period of employment with the agency.

2 "(2) The agreement shall set forth the length of the required service period, the amount of the
3 bonus, the method of payment, and other terms and conditions under which the bonus is payable,
4 subject to subsections (e) and (f) and regulations of the Office. The terms and conditions for paying a
5 bonus, as specified in the service agreement, shall include the conditions under which the agreement
6 may be terminated before the agreed-upon service period has been completed and the effect of the
7 termination.

8 "(3) Notwithstanding paragraph (1), a written service agreement is not required if the agency
9 pays a retention bonus in biweekly installments and sets the installment payment at the full bonus
10 percentage rate established for the employee with no portion of the bonus deferred. In this case, the
11 agency shall inform the employee in writing of a decision to discontinue the retention bonus payments.
12 Except as provided in regulations of the Office, the employee shall continue to accrue entitlement to the
13 retention bonus through the end of the pay period in which such written notice is provided.

14 "(4) An employee may not accrue entitlement to a retention bonus during a service period
15 previously established for that employee under section 5753.

16 "(e)(1) Except as provided in subsection (f), a retention bonus, which shall be stated as a
17 percentage of the employee's basic pay for the service period associated with the bonus, may not
18 exceed 25 percent of the employee's basic pay if paid under subsection (a) or 10 percent of an
19 employee's basic pay if paid under subsection (b).

20 "(2) A retention bonus may be paid to an employee in installments after completion of specified
21 periods of service or in a single lump sum at the end of the full period of service required by the

1 agreement. An installment payment may not exceed the product derived from multiplying the amount of
2 basic pay earned in the installment period by a percentage not to exceed the bonus percentage rate
3 established for the employee. If the installment payment percentage is less than the bonus percentage
4 rate, the accrued but unpaid portion of the bonus is payable as part of the final installment payment to
5 the employee after completion of the full service period under the terms of the service agreement.

6 "(3) A retention bonus is not part of the basic pay of an employee for any purpose.

7 "(f) Upon the request of the head of an agency, the Office may waive the limit established under
8 subsection (e)(1) and permit the agency head to pay an otherwise eligible employee or category of
9 employees retention bonuses of up to 50 percent of basic pay, based on a critical agency need.

10 "(g) The Office shall require that, before paying a bonus under this section, an agency shall
11 establish a plan for paying retention bonuses, subject to regulations prescribed by the Office.

12 "(h) The Office shall prescribe such regulations as it considers necessary for the administration
13 of this section.

14 "(i)(1) At the request of the head of an Executive agency, the Office may extend coverage
15 under this section to categories of employees within the agency who otherwise would not be covered
16 by this section.

17 "(2) The Office shall not extend coverage under this section to the head of an Executive agency,
18 including an Executive agency headed by a board or other collegial body composed of two or more
19 individual members.

20 "(j) For purposes of this section, 'employee' has the meaning given that term by section 2105,
21 except that such term also includes an employee described in subsection (c) of such section.

1 (2) in the table of sections by amending the item relating to section 5754 to read as
2 follows:

3 "5754. Retention bonuses."

4 (b) Section 407 of the Federal Employees Pay Comparability Act of 1990 (104 Stat. 1467;
5 5 U.S.C. 5305 note) is repealed.

6 **Sec. 122. Academic degree training.**

7 Chapter 41 of title 5, United States Code, is amended--

8 (1) by amending section 4107 to read as follows:

9 **"§4107. Academic degree training";**

10 "(a) Subject to subsection (b), an agency may select and assign an employee to academic
11 degree training and may pay or reimburse the costs of academic degree training from appropriated or
12 other available funds if such training--

13 "(1) contributes significantly to meeting an identified agency training need, to resolving
14 an identified agency staffing problem, or to accomplishing goals in the agency's strategic plan;

15 "(2) is part of a planned, systematic, and coordinated agency employee development
16 program linked to accomplishing the agency's strategic goals and objectives; and

17 "(3) is accredited and is provided by a college or university that is accredited by a
18 nationally recognized body.

19 "(b) In exercising authority under subsection (a), an agency shall--

20 "(1) consistent with the merit system principles set forth in paragraphs (2) and (7) of
21 section 2301(b), take into consideration the need to--

1 "(A) maintain a balanced workforce in which women, members of racial and
2 ethnic minority groups, and persons with disabilities are appropriately represented in
3 Government service; and

4 "(B) provide employees effective education and training to improve
5 organizational and individual performance;

6 "(2) assure that the training is not for the sole purpose of providing an employee an
7 opportunity to obtain an academic degree or to qualify for appointment to a particular position
8 for which the academic degree is a basic requirement; and

9 "(3) assure that no authority under this subsection is exercised on behalf of any
10 employee occupying or seeking to qualify for appointment to any position that is excepted from
11 the competitive service because of its confidential policy-determining, policy-making, or policy-
12 advocating character."; and

13 (2) in the table of sections by amending the item relating to section 4107 to read as
14 follows:

15 "4107. Academic degree training."

16 **Sec. 123. Professional credentials.**

17 Chapter 57 of title 5, United States Code, as amended by section 121, is further amended—

18 (1) by adding at the end the following new section:

19 **"§5757. Expenses for credentials**

20 "(a) An agency may, when consistent with the agency's strategic goals and objectives, use
21 appropriated or other available funds to pay for—

1 "(1) employee credentials, including professional accreditation, state-imposed and
2 professional licenses, and professional certifications; and

3 "(2) examinations to obtain these credentials.

4 "(b) No authority under subsection (a) may be exercised on behalf of any employee occupying
5 or seeking to qualify for appointment to any position which is excepted from the competitive service
6 because of its confidential, policy-determining, policy-making, or policy-advocating character.

7 "(c) An agency may, in accordance with regulations of the Office of Personnel Management
8 and subject to the same terms and conditions that apply to continued service agreements under section
9 4108, require such an agreement in conjunction with payment of expenses authorized under subsection
10 (a)."; and

11 (2) in the table of sections by adding at the end the following new item:

12 "5757. Expenses for credentials."

13 **Sec. 124. Correction of pay administration problems.**

14 (a) Chapter 53 of title 5, United States Code, is amended--

15 (1) by amending section 5302(8) to read as follows:

16 "(8) the term 'rates of pay under the General Schedule', 'rates of pay for the General
17 Schedule', or 'scheduled rates of basic pay' means the unadjusted rates of basic pay in the
18 General Schedule as established by section 5332, excluding additional pay of any kind; and";

19 (2) in section 5305--

20 (A) by amending subsection (a) to read as follows:

21 "(a)(1) Whenever the Office of Personnel Management finds that the Government's recruitment

1 or retention efforts with respect to one or more occupations in one or more areas or locations are, or
2 are likely to become, significantly handicapped due to any of the circumstances described in subsection
3 (b), the Office may establish for the areas or locations involved, with respect to individuals in positions
4 paid under any of the pay systems referred to in subsection (c), higher minimum rates of pay for one or
5 more grades or levels, occupational groups, series, classes, or subdivisions thereof, and may make
6 corresponding increases in all rates of the pay range for each such grade or level. However, a minimum
7 rate so established may not exceed the maximum rate of basic pay (excluding any locality-based
8 comparability payment under section 5304 or similar provision of law) for the grade or level by more
9 than 30 percent, and no rate may be established under this section in excess of the rate of basic pay
10 payable for level IV of the Executive Schedule. In the case of individuals not subject to the provisions
11 of this title governing appointment in the competitive service, the President may designate another
12 agency to authorize special rates under this section.

13 "(2) The head of an agency may determine that a category of employees of the agency will not
14 be covered by a special rate authorization established under this section. The agency head shall
15 provide formal written notice to the Office of Personnel Management (or other agency designated by
16 the President to authorize special rates) which identifies the specific category or categories of
17 employees that will not be covered by special rates authorized under this section. If the head of an
18 agency removes a category of employees from coverage under a special rate authorization after that
19 authorization takes effect, the loss of coverage will take effect on the first day of the first pay period
20 after the date of the notice.";

21 (B) by amending subsection (b)(4) to read as follows:

1 "(4) any other circumstances which the Office of Personnel Management (or such
2 agency as the President may designate) considers appropriate.";

3 (C) in subsection (d)--

4 (i) by striking "President" and inserting "Office of Personnel
5 Management"; and

6 (ii) by striking "he" and inserting "the President";

7 (D) in subsection (e) by striking "basic pay" and inserting "pay";

8 (E) by amending subsection (f) to read as follows:

9 "(f) When a schedule of special rates established under this section is adjusted under subsection
10 (d), a covered employee's special rate will be adjusted in accordance with conversion rules prescribed
11 by the Office of Personnel Management or by such agency as the President may designate.";

12 (F) in subsection (g)(1)--

13 (i) by striking "basic pay" and inserting "pay"; and

14 (ii) by striking "President (or his designated agency)" and inserting
15 "Office of Personnel Management (or such agency as the President may
16 designate)";

17 (G) by amending subsection (h) to read as follows:

18 "(h) An employee's entitlement to a rate of pay established under this section terminates when
19 the employee is entitled to a higher rate of pay (including basic pay as adjusted to include any locality-
20 based comparability payment under section 5304 or similar provision of law)."; and

21 (H) by adding at the end the following new subsections:

1 "(i) When an employee who is receiving a rate of pay established under this section moves to a
2 new official duty station at which different pay schedules apply, the employee shall be entitled to the
3 rates of pay applicable in the new pay area based on the employee's position, grade and step (or
4 relative position in the rate range) before the movement, as determined under regulations prescribed by
5 the Office of Personnel Management or other agency designated by the President under subsection (a).
6 Such pay conversion upon geographic movement shall be effected before processing any other
7 simultaneous pay action (other than a general pay adjustment).

8 "(j) A rate established under this section shall be considered to be part of basic pay for
9 purposes of subchapter III of chapter 83, chapter 84, chapter 87, subchapter V of chapter 55, section
10 5941, and for such other purposes as may be expressly provided for by law or as the Office of
11 Personnel Management may by regulation prescribe.";

12 (3) in section 5334--

13 (A) in subsection (b) by adding at the end the following: "If an employee's rate
14 after promotion or transfer is greater than the maximum rate of basic pay for the
15 employee's grade, that rate shall be treated as a retained rate under section 5363. The
16 Office of Personnel Management shall prescribe by regulation the circumstances under
17 which and the extent to which special rates under section 5305 (or similar provision of
18 law) or locality-adjusted rates under section 5304 (or similar provision of law) are
19 considered to be basic pay in applying the provisions of this subsection."; and

20 (B) by adding at the end the following new subsection:

21 "(g) When an employee moves to a new official duty station at which different pay schedules

1 apply, the employee shall be entitled to the rates of pay applicable in the new pay area based on the
2 employee's position, grade and step (or relative position in the rate range) before the movement. Such
3 pay conversion upon geographic movement shall be effected before processing any other simultaneous
4 pay action (other than a general pay adjustment).";

5 (4) in section 5361--

6 (A) by striking paragraphs (3) and (4) and redesignating paragraphs (5) - (7) as
7 paragraphs (3) - (5);

8 (B) in paragraph (4) as redesignated by striking "and" at the end;

9 (C) in paragraph (5) as redesignated by striking the period and inserting a
10 semicolon; and

11 (D) by adding at the end the following new paragraphs:

12 "(6) 'rate of basic pay' means--

13 "(A) the rate of pay prescribed by law or regulation for the position held by an
14 employee before any deductions or additions of any kind, but including any applicable
15 locality-based payment under section 5304 or similar provision of law, any applicable
16 special salary rate under section 5305 or similar provision of law, and any applicable
17 existing retained rate of pay established under section 5363 or similar provision of law;
18 and

19 "(B) in the case of a prevailing rate employee, the scheduled rate of pay
20 determined under section 5343;

21 "(7) 'former highest applicable rate of basic pay' means the highest applicable rate of

1 basic pay payable to the employee immediately before the action that triggers pay retention
2 under section 5363; and

3 "(8) 'highest applicable basic pay rate range' means the range of rates of basic pay for
4 the grade or level of the employee's current position with the highest maximum rate, except as
5 otherwise provided in regulations prescribed by the Office of Personnel Management in cases
6 where another rate range provides higher rates only in the lower portion of the range.";

7 (5) in section 5363--

8 (A) in subsection (a) by amending the matter following paragraph (4) to read as
9 follows: "is entitled to pay retention under the conditions set forth in this section.

10 Notwithstanding any other provision, this section may not be applied to employees
11 whose rate of basic pay is reduced solely because of the recomputation of pay upon
12 movement to a new official duty station at which different pay schedules apply. When a
13 geographic move is accompanied by a simultaneous pay action that reduces the
14 employee's rate of basic pay after the employee's pay has been recomputed to reflect
15 the geographic move, this section shall be applied, if otherwise applicable."; and

16 (B) by striking subsections (b) and (c) and inserting the following new
17 subsections:

18 "(b) If an employee is entitled to pay retention under subsection (a), the following rules apply in
19 determining the employee's rate of pay:

20 "(1) If the employee's former highest applicable rate of basic pay is less than or equal to
21 the maximum rate of the highest applicable basic pay rate range for the employee's current

1 position, the employee is entitled to the lowest payable rate of basic pay in that rate range that
2 equals or exceeds the former rate, and pay retention ceases to apply; and

3 "(2) If the employee's former highest applicable rate of basic pay exceeds the maximum
4 rate of the highest applicable basic pay rate range for the employee's current position, the
5 employee is entitled to a retained rate equal to the lesser of--

6 "(A) the employee's former highest applicable rate of basic pay; or

7 "(B) 150 percent of the maximum rate of the highest applicable basic pay rate
8 range for the employee's position.

9 "(c) An employee's retained rate shall be increased at the time of any increase in the maximum
10 rate of the highest applicable basic pay rate range for the employee's position by 50 percent of the
11 dollar increase in that maximum rate.

12 "(d) The rate of pay for an employee who is receiving a retained rate under this section and
13 who is moved to a new official duty station at which different pay schedules apply shall be determined
14 under regulations prescribed by the Office of Personnel Management consistent with the purposes of
15 this section.

16 "(e) A retained rate shall be considered part of basic pay for purposes of this subchapter and
17 for purposes of subchapter III of chapter 83, chapters 84 and 87, subchapter V of chapter 55, section
18 5941, and for such other purposes as may be expressly provided for by law or as the Office of
19 Personnel Management may by regulation prescribe. For other purposes, the Office shall prescribe by
20 regulation what constitutes basic pay for employees receiving a retained rate.

21 "(f) The preceding provisions of this section do not apply (or shall cease to apply) to an

1 employee who--

2 "(1) has a break in service of one workday or more;

3 "(2) is entitled by operation of this subchapter or chapter 51 or 53 to a rate of basic
4 pay which is equal to or higher than, or declines a reasonable offer of a position the rate of
5 basic pay for which is equal to or higher than, the rate to which the employee is entitled under
6 this section; or

7 "(3) is demoted for personal cause or at the employee's request."; and

8 (6) in section 5365(b) by inserting after "this subchapter" the first time it appears the
9 following: "(subject to any conditions or limitations the Office may establish)".

10 (b) Section 403(c) of the Federal Employees Pay Comparability Act of 1990 [Public Law
11 101-509, Sec. 529] is amended by striking everything after the parenthetical phrase and inserting the
12 following: "and shall be basic pay for all purposes. The rates shall be adjusted at the time of
13 adjustments in the General Schedule to maintain the step linkage set forth in subsection (b)(2).".

14 (c) Subject to any regulations the Office of Personnel Management may prescribe, any
15 employee in a covered pay schedule who is receiving a retained rate under section 5363 of title 5,
16 United States Code, or similar authority on the effective date of this Act shall have his or her pay
17 converted on that date. The newly applicable retained rate shall equal the formerly applicable retained
18 rate as adjusted to include any applicable locality-based payment under section 5304 of title 5, United
19 States Code, or similar provision of law. Any employee in a covered pay system receiving a rate that
20 exceeds the maximum rate of the highest applicable basic pay rate range for the employee's position (as
21 defined in section 5361(8) of such title 5, as amended by this Act) under any authority shall be

1 considered to be receiving a retained rate under section 5363 of title 5.

2 **Sec. 125. Civil Service Retirement System computation for part-time service.**

3 Section 8339(p) of title 5, United States Code, is amended by adding at the end the following
4 new paragraph:

5 "(3) In the administration of paragraph (1)--

6 "(A) subparagraph (A) of such paragraph shall apply to any service performed
7 before, on, or after April 7, 1986;

8 "(B) subparagraph (B) of such paragraph shall apply to all service performed
9 on a part-time or full-time basis on or after April 7, 1986; and

10 "(C) any service performed on a part-time basis before April 7, 1986, shall be
11 credited as service performed on a full-time basis."

12 **Sec. 126. Promotional items received pursuant to official travel.**

13 (a) Travel and Transportation Allowances.--Section 404 of title 37, United States Code, is
14 amended--

15 (1) by redesignating subsection (j) as subsection (k); and

16 (2) by inserting after subsection (i) the following new subsection:

17 "(j) Promotional items a member receives as a consequence of travel paid by the United States,
18 or accepted under the provisions of section 1353 of title 31, United States Code, may be retained by
19 the member. Promotional items include but are not limited to frequent travel programs, upgrades, and
20 access to carrier clubs or facilities. Such items shall be obtained under the same terms as provided the
21 general public and shall be at no additional cost."

1 (b) Per Diem Allowances.—Section 5702 of title 5, United States Code, is amended—

2 (1) by redesignating subsection (c) as subsection (d); and

3 (2) by inserting after subsection (b) the following new subsection (c):

4 "(c) Notwithstanding the provisions of subsection (d), promotional items an employee (including
5 justices and judges) receives as a consequence of travel paid by the United States, or accepted
6 pursuant to the provisions of section 1353 of title 31, United States Code, may be retained by the
7 employee. Promotional items include but are not limited to frequent travel programs, upgrades, and
8 access to carrier clubs or facilities. Such items shall be obtained under the same terms as provided the
9 general public and shall be at no additional cost."

10 (c) Amendment to Foreign Service Act.—Section 901 of the Foreign Service Act of 1980 (22
11 U.S.C. 4081) is amended—

12 (1) by inserting "(a)" before "The Secretary"; and

13 (2) by adding at the end the following new subsection (b):

14 "(b) Promotional items a member of the Service receives as a consequence of travel paid by the
15 United States, or accepted pursuant to the provisions of section 1353 of title 31, United States Code,
16 may be retained by the member. Promotional items include but are not limited to frequent travel
17 programs, upgrades, and access to carrier clubs or facilities. Such items shall be obtained under the
18 same terms as provided the general public and shall be at no additional cost."

19 (d) Repeal of Limitation on the Use of Travel Awards.—Section 6008 of the Federal Acquisition
20 Streamlining Act of 1994 (Public Law 103-355; 108 Stat. 3367) is repealed.

21 **Sec. 127. Student volunteer transit subsidy.**

1 (a) Section 7905 of Title 5, United States Code, is amended in subsection (a)(1), by striking
2 "and a member of a uniformed service" and inserting ", a member of a uniformed service, and a student
3 who provides voluntary services pursuant to 5 U.S.C. 3111."

4 (b) Conforming Amendment. -Section 3111(c)(1) of title 5, United States Code, is amended
5 by striking "chapter 81 of this title" and inserting "section 7905 (relating to commuting by means other
6 than single-occupancy motor vehicles), chapter 81."

7 **Sec. 128. Effective date.**

8 (a) Except as otherwise provided by this section, the amendments made by the preceding
9 sections shall take effect on the first day of the first pay period beginning on or after the 180th day after
10 enactment of this subtitle with the exception of sections 126 and 127, which shall take effect
11 immediately upon enactment of this subtitle.

12 (b) A recruitment or relocation bonus service agreement that was authorized under section
13 5753 of title 5, United States Code, before the effective date set forth in subsection (a) shall continue,
14 until its expiration, to be subject to section 5753 as in effect on the day before such effective date.

15 (c) Payment of a retention allowance that was authorized under section 5754 of title 5, United
16 States Code, before the effective date set forth in subsection (a) shall continue, subject to section 5754
17 as in effect on the day before such effective date, until the retention allowance is reauthorized or
18 terminated (but no longer than one year after such effective date).

19 (d) The amendments made by section 124 shall take effect on the date of enactment of this Act
20 and shall apply only with respect to individuals who, on or after such date of enactment, separate from
21 employment subject to subchapter III of chapter 83, or chapter 84, of title 5, United States Code.

1 **SUBTITLE D - PROMOTION OF RESULTS-ORIENTED PERFORMANCE**

2 **EVALUATION AND COMPENSATION FOR SENIOR EXECUTIVES**

3 **Section 131. Cap on total annual compensation.**

4 Section 5307(a) of title 5, United States Code, is amended by adding at the end the following new
5 paragraph:

6 "(3) Notwithstanding paragraph (1), the total payment referred to under such paragraph
7 with respect to an employee paid under section 5376 or 5383 shall not exceed the total annual
8 compensation payable to the Vice President under section 104 of title 3, United States Code.
9 Regulations prescribed under subsection (c) may extend the application of this paragraph to
10 other equivalent categories of employees."

11 **Sec. 132. Repeal of senior executive recertification.**

12 (a) Title 5, United States Code, is amended--

13 (1) in chapter 33--

14 (A) in section 3393(g) by striking "3393a,";

15 (B) by repealing section 3393a; and

16 (C) in the analysis by striking the item relating to section 3393a;

17 (2) in subchapter V of chapter 35--

18 (A) in section 3592(a)--

19 (i) in paragraph (1) by striking the comma at the end and inserting ";

20 or";

21 (ii) in paragraph (2) by striking "of this title, or" at the end and inserting

1 a semicolon;

2 (iii) by striking paragraph (3); and

3 (iv) by striking the last sentence;

4 (B) in section 3593(a) by amending paragraph (2) to read as follows:

5 "(2) the appointee left the Senior Executive Service for reasons other than misconduct,
6 neglect of duty, malfeasance, or less than fully successful executive performance as determined
7 under subchapter II of chapter 43."; and

8 (C) in section 3594(b)--

9 (i) in paragraph (1) by striking "of this title; or" at the end and inserting

10 "; or";

11 (ii) in paragraph (2) by striking "of this title; or" at the end and inserting

12 a semicolon; and

13 (iii) by striking paragraph (3);

14 (3) in section 7701(c)(1)(A) by striking "or removal from the Senior Executive Service
15 for failure to be recertified under section 3393a";

16 (4) in subchapter III of chapter 83--

17 (A) in section 8336(h)(1) by striking "for failure to be recertified as a senior
18 executive under section 3393a or"; and

19 (B) in section 8339(h), in the first sentence, by striking ", except that such
20 reduction shall not apply in the case of an employee retiring under section 8336(h) for
21 failure to be recertified as a senior executive"; and

1 (5) in subchapter II of chapter 84--

2 (A) in section 8414(a)(1) by striking "for failure to be recertified as a senior
3 executive under section 3393a or"; and

4 (B) in section 8421(a)(2) by striking ", except that an individual entitled to an
5 annuity under section 8414(a) for failure to be recertified as a senior executive shall be
6 entitled to an annuity supplement without regard to such applicable minimum retirement
7 age".

8 (b) Notwithstanding the amendments made by subsection (a)(2)(A) of this section, an appeal
9 under the final sentence of section 3592(a) of title 5, United States Code, that is pending on the day
10 before the enactment of this Act--

11 (1) shall not abate by reason of the enactment of such amendments; and

12 (2) shall continue as if such amendments had not been enacted.

13 (c) The amendment made by subsection (a)(2)(B) shall not apply with respect to an individual
14 who, before 90 days after the date of enactment of this Act, leaves the Senior Executive Service for
15 failure to be recertified as a senior executive under section 3393a of title 5, United States Code.

16 **Sec. 133. Annual leave enhancements.**

17 (a) Chapter 63 of title 5, United States Code, is amended--

18 (1) in section 6303(a)--

19 (A) in paragraph (2) by striking "and" at the end;

20 (B) in paragraph (3) by striking the period at the end and inserting "; and"; and

21 (C) by inserting after paragraph (3) the following:

1 "(4) one day for each full biweekly pay period for an employee in a position paid
2 under section 5376 or 5383, or for an employee in an equivalent category for which the
3 minimum rate of basic pay is greater than GS-15, step 10, to which the application of the
4 paragraph is extended by the Office by regulation under section 6311.";

5 (2) by inserting after section 6304 the following new section:

6 "**§6304a. Annual leave.**

7 "(a) The head of an agency may provide an annual leave credit to an employee who is newly
8 appointed from outside the civil service to a position paid under section 5376 or 5383, or for an
9 employee in an equivalent category for which the minimum rate of basic pay is greater than GS-15, step
10 10, to which the application of this section is extended by the Office by regulation under section 6311,
11 when the agency head determines that the credit is needed to complete the recruitment of a highly
12 qualified candidate.

13 "(b) The amount of the annual leave credit under subsection (a) may not exceed 10 full days
14 and is in addition to annual leave accrued by the employee under section 6303.

15 "(c) In the case of an employee who receives an annual leave credit under subsection (a) and
16 who separates prior to completing one year of service, the maximum amount of a lump-sum payment
17 under section 5551 shall be equal to the amount payable for annual leave actually accrued."; and

18 (3) in the table of sections by inserting the following item after the item relating to
19 section 6304:

20 "6304a. Annual leave credit."

21 **Sec. 134. Effective date.**

1 The amendments made by this subtitle shall take effect on the first day of the first pay period
2 beginning on or after 180 days following the date of enactment of this subtitle.

3 **SUBTITLE E- FEDERAL HUMAN RESOURCES MANAGEMENT INNOVATIONS**

4 **Sec. 141. Project management and alternative personnel systems.**

5 (a) Chapter 47 of title 5, United States Code, is amended--

6 (1) by amending section 4701--

7 (A) in subsection (a)--

8 (i) by striking "(a)";

9 (ii) by amending paragraph (1) to read as follows:

10 "(1) 'agency' means an Executive agency and any entity that is subject to any provision
11 of this title that could be waived under section 4703, but does not include--

12 "(A) the Federal Bureau of Investigation, the Central Intelligence Agency, the
13 Defense Intelligence Agency, the National Imagery and Mapping Agency, the National
14 Security Agency, and, as determined by the President, any Executive agency or unit
15 thereof which is designated by the President and which has as its principal function the
16 conduct of foreign intelligence or counterintelligence activities; or

17 "(B) the General Accounting Office;"

18 (iii) in paragraph (4) by striking "and" at the end;

19 (iv) by redesignating paragraph (5) as paragraph (6); and

20 (v) by inserting after paragraph (4) the following new paragraph:

21 "(5) 'modification' means a significant change in one or more of the elements of a

1 demonstration project plan as described in section 4703(b)(1); and"; and

2 (B) by striking subsection (b); and

3 (2) in section 4703--

4 (A) in subsection (a)--

5 (i) by striking "conduct and evaluate demonstration projects" and

6 inserting "conduct, modify, and evaluate demonstration projects";

7 (ii) by striking ", including any law or regulation relating to--" and all that

8 follows and inserting a period; and

9 (iii) by adding at the end the following: "The decision to initiate or

10 modify a project under this section shall be made by the Office.";

11 (B) by amending subsection (b) to read as follows:

12 "(b) Before conducting or entering into any agreement or contract to conduct a demonstration
13 project, the Office shall ensure--

14 "(1) that each project has a plan which describes--

15 "(A) its purpose;

16 "(B) the employees to be covered;

17 "(C) its anticipated outcomes and resource implications, including how the
18 project relates to carrying out the agency's strategic plan, including meeting
19 performance goals and objectives, and accomplishing its mission;

20 "(D) the personnel policies and procedures the project will use that differ from
21 those otherwise available and applicable, including a specific citation of any provisions

1 of law, rule, or regulation to be waived and a specific description of any contemplated
2 action for which there is a lack of specific authority;

3 "(E) an evaluation plan, including the methodology and criteria for evaluation;
4 and

5 "(F) the agency's system for ensuring that the project is implemented in a
6 manner consistent with merit system principles;

7 "(2) notification of the proposed project to employees who are likely to be affected by
8 the project;

9 "(3) an appropriate comment period;

10 "(4) publication of the final plan in the Federal Register;

11 "(5) notification of the final project at least 30 days in advance of the date any project
12 proposed under this section is to take effect to employees who are likely to be affected by the
13 project;"

14 "(6) publication of any subsequent modification in the Federal Register; and

15 "(7) notification of any subsequent modification to employees who are included in the
16 project.";

17 (C) in subsection (c)--

18 (i) by amending paragraph (1) to read as follows:

19 "(1) any provision of chapter 63 or subpart G of part III of this title;"

20 (ii) by redesignating paragraphs (4) and (5) as paragraphs (6) and (7),

21 respectively;

1 (iii) by inserting after paragraph (3) the following new paragraphs:

2 "(4) section 7342, 7351, or 7353;

3 "(5) Appendix 4 of this title;"

4 (iv) in paragraph (6) as redesignated, by striking "paragraph (1), (2), or
5 (3) of this subsection; or" and inserting "paragraphs (1) through (5)"; and

6 (v) in paragraph (7) as redesignated, by adding at the end the following:

7 "Notwithstanding section 2302(e)(1), for purposes of applying section
8 2302(b)(11) in a demonstration project under this chapter, 'veterans'
9 preference requirement' means any of the specific provisions of the
10 demonstration project plan that are designed to ensure that the project is
11 consistent with veterans' preference principles.";

12 (D) by amending subsections (d) and (e) to read as follows:

13 "(d) Before the end of the five-year period beginning on the date on which a demonstration
14 project takes effect, the Office shall determine whether the project shall be--

15 "(1) terminated;

16 "(2) continued beyond the end of such five-year period for purposes of evaluation; or

17 "(3) converted to an alternative personnel system under chapter 49.

18 "(e) The Office may terminate a demonstration project under this chapter if it determines that
19 the project--

20 "(1) is not consistent with merit system principles set forth in section 2301, veterans
21 preference principles, or the provisions of this chapter; or

1 "(2) otherwise imposes a substantial hardship on, or is not in the best interests of, the
2 public, the Government, employees, or eligibles.

3 (E) by amending subsections (h) and (i) to read as follows:

4 "(h) The Office shall ensure that each demonstration project is evaluated. Each evaluation shall
5 assess—

6 "(1) the project's compliance with the plan developed under subsection (b)(1); and

7 "(2) the project's impact on improving public management.

8 "(i) Upon request of the Director of the Office of Personnel Management, agencies shall
9 cooperate with and assist the Office in any evaluation or conversion undertaken under subsection (h)
10 and provide the Office with requested information and reports relating to the conducting of
11 demonstration projects in their respective agencies."

12 (b) title 5, United States Code, is amended—

13 (1) by inserting after chapter 47 the following new chapter:

14 "CHAPTER 49 -- ALTERNATIVE PERSONNEL SYSTEMS

15 "**§4901. Definitions**

16 "For the purpose of this chapter--

17 "(1) 'agency' has the meaning set forth in section 4701(a)(1);

18 "(2) 'alternative personnel system' means a system for human resources management in
19 an agency which--

20 "(A)(i) requires a waiver (except as prohibited under section 4902(c)) of one or
21 more of the provisions of this title or any rule or regulation prescribed under this title; or

1 "(ii) exercises authorities not specifically in law, rule, or regulation;

2 "(B) is designed to improve the agency's ability to carry out its strategic plan
3 and accomplish its mission efficiently and effectively; and

4 "(C)(i) is similar to one or more systems already tested successfully in at least
5 one other agency as a demonstration project under chapter 47; or

6 "(ii) has otherwise been determined by the Office of Personnel Management not
7 to require testing as a demonstration project before being implemented by the agency
8 as an alternative personnel system;

9 "(3) 'eligible' has the meaning set forth in section 4701(a)(3);

10 "(4) 'employee' has the meaning set forth in section 4701(a)(2); and

11 "(5) 'modification' means a significant change in one or more of the elements of an
12 alternative personnel system plan as described in section 4902(b)(1).

13 "**§4902. Alternative personnel systems**

14 "(a) An agency may implement and subsequently modify one or more alternative personnel
15 systems in accordance with the provisions of this chapter. An alternative personnel system shall not be
16 limited by any lack of specific authority under this title to take the action contemplated or, except as
17 otherwise provided in this section, by any provision of this title or any rule or regulation prescribed
18 under this title which is inconsistent with the action.

19 "(b) Except as provided in section 4903(b), before implementing an alternative personnel
20 system an agency shall--

21 "(1) develop a plan for such system which describes--

1 "(A) its purpose;

2 "(B) the employees to be covered;

3 "(C) its anticipated outcomes and resource implications, including how the
4 system relates to carrying out the agency's strategic plan, including meeting performance
5 goals and objectives, and accomplishing its mission;

6 "(D) the personnel policies and procedures the alternative system will use that
7 differ from those otherwise available and applicable, including a specific citation of any
8 provisions of law, rule, or regulation to be waived and a specific description of any
9 contemplated action for which there is a lack of specific authority; and

10 "(E) the agency's system for ensuring that the alternative system is consistent
11 with merit system principles;

12 "(2) submit the plan and any subsequent modification to the Office of Personnel
13 Management for approval; and

14 "(3) provide advance notification of the plan and any subsequent modification to
15 employees who are likely to be affected by the alternative personnel system.

16 "(c) No alternative personnel system under this section may provide for a waiver of--

17 "(1) any provision of chapter 63 or subpart G of part III of this title;

18 "(2)(A) any provision of law referred to in section 2302(b)(1); or

19 "(B) any provision of law implementing any provision of law referred to in section
20 2302(b)(1) by--

21 "(i) providing for equal employment opportunity through affirmative action; or

1 (ii) providing any right or remedy available to any employee or applicant for
2 employment in the civil service;

3 (3) any provision of chapter 15 or subchapter III of chapter 73;

4 (4) section 7342, 7351, or 7353;

5 (5) Appendix 4 of this title;

6 (6) any rule or regulation prescribed under any provision of law referred to in
7 paragraphs (1) through (5); or

8 (7) any provision of chapter 23, or any rule or regulation prescribed under this title, if
9 such waiver is inconsistent with any merit system principle or any provision thereof relating to
10 prohibited personnel practices. Notwithstanding section 2302(e)(1), for purposes of applying
11 section 2302(b)(11) in an alternative personnel system under this chapter, 'veterans' preference
12 requirement' means any of the specific provisions of the alternative personnel system plan that
13 are designed to ensure that the system is consistent with veterans' preference principles."

14 (d) Employees within a unit with respect to which a labor organization is accorded exclusive
15 recognition under chapter 71 shall not be included within any alternative personnel system implemented
16 or subsequently modified under this chapter—

17 (1) if the alternative system would violate a collective bargaining agreement (as defined
18 in section 7103(8)) between the agency and the labor organization, unless there is another
19 written agreement with respect to the alternative system between the agency and the
20 organization permitting the inclusion; or

21 (2) if the alternative system would not violate such a collective bargaining agreement,

1 until there has been consultation or negotiation, as appropriate, by the agency with the labor
2 organization.

3 "(e) Employees within any unit with respect to which a labor organization has not been
4 accorded exclusive recognition under chapter 71 shall not be included in any alternative personnel
5 system implemented or subsequently modified under this chapter unless there has been agency
6 consultation regarding the alternative system with the employees in the unit.

7 **"§4903. Responsibilities of the Office of Personnel Management**

8 "(a)(1) No alternative personnel system under this chapter may be implemented or subsequently
9 modified without the approval of the Office of Personnel Management. Approval shall be based on a
10 determination that the proposed alternative system or any subsequent modification meets all of the
11 requirements of this chapter. The Office shall inform the agency of the approval or disapproval of its
12 proposed alternative system within 90 days after receiving a complete plan as described in section
13 4902(b)(1).

14 "(2) The Office shall publish in the Federal Register a notice of its approval of each alternative
15 personnel system. The notice shall include a summary of the alternative system. This notice
16 requirement shall apply to a modification of an alternative personnel system which is determined by the
17 Office in its sole discretion to be sufficiently significant to warrant publication.

18 "(b) At the request of the agency and subject to sections 4703(d)(2) and 4902(d), the Office
19 may convert a demonstration project under chapter 47 to an alternative personnel system, without
20 requiring the agency to develop a plan as described in section 4902(b), when the Office determines that
21 the project has demonstrated sufficient success to be implemented permanently in the agency. When a

1 project is converted under this subsection, the demonstration project plan under section 4703(b)(1),
2 including any subsequent modifications, is deemed to be the alternative personnel system plan under
3 section 4902(b)(1).

4 "(c) The Office may terminate an alternative personnel system if it determines that the alternative
5 system--

6 "(1) is not consistent with merit system principles set forth in section 2301, veterans
7 preference principles, or the provisions of this chapter; or

8 "(2) otherwise imposes a substantial hardship on, or is not in the best interests of, the
9 public, the Government, employees, or eligibles.

10 **"§4904. Regulations**

11 "The Office of Personnel Management shall prescribe regulations needed to administer this
12 chapter."; and

13 (2) in the table of sections by inserting after the items relating to chapter 47 the
14 following:

15 "CHAPTER 49 – ALTERNATIVE PERSONNEL SYSTEMS

16 "Sec.

17 "4901. Definitions.

18 "4902. Alternative personnel systems.

19 "4903. Responsibilities of the Office of Personnel Management.

20 "4904. Regulations."

21 (c) The table of chapters for Part III of title 5, United States Code, is amended by inserting

1 after the item relating to chapter 47 the following new item:

2 "49. Alternative Personnel Systems.....4901".

3 (d)(1) The demonstration project established under section 10 of the National Bureau of
4 Standards Authorization Act for Fiscal Year 1987 (15 U.S.C. 275 note) shall become an alternative
5 personnel system under chapter 49 of title 5, United States Code, on the effective date set forth in
6 section 142.

7 (2) Section 10 of the National Technology Transfer and Advancement Act of 1995 is repealed.

8 (e)(1) The demonstration project authorized by section 4703 of title 5, United States Code, at
9 the Naval Weapons Center, China Lake, California, and at the Naval Ocean Systems Center, San
10 Diego, California, as subsequently modified and continued, shall become an alternative personnel
11 system under chapter 49 of title 5, United States Code, on the effective date set forth in section 142.

12 (2) Section 342(a) of the National Defense Authorization Act for Fiscal Year 1995 (Public
13 Law 103-337; 108 Stat. 2663), as amended, is repealed. Any demonstration project authorized by
14 such section 342(a), as amended, shall become a demonstration project under chapter 47 of title 5,
15 United States Code, on the effective date set forth in section 142.

16 (f)(1) The demonstration project authorized by section 4703 of title 5, United States Code, at
17 the United States Department of Agriculture, as subsequently modified and continued, shall become an
18 alternative personnel system under chapter 49 of title 5 on the effective date set forth in section 142.

19 (2) Section 749 of the Agriculture, Rural Development, Food and Drug Administration, and
20 Related Agencies Appropriations Act, 1999, as contained in section 101(a) of the Omnibus
21 Consolidated and Emergency Supplemental Appropriations Act, 1999 (Public Law 105-277), is

1 repealed.

2 (g) Section 1104 of title 5, United States Code, is amended--

3 (1) in subsection (b)--

4 (A) by amending paragraph (1) to read as follows:

5 "(b)(1) The Office shall establish standards which shall apply to--

6 "(A) the activities of the Office or any other agency under authority delegated under
7 subsection (a); and

8 "(B) any agency operating a demonstration project under chapter 47 or an alternative
9 personnel system under chapter 49."; and

10 (B) in paragraph (2) by striking "of this section" and inserting "and any activities
11 under chapter 47 or 49"; and

12 (2) in subsection (c) by striking "pursuant to authority delegated under subsection (a)(2)
13 of this section" and inserting "under chapter 47 or 49 or pursuant to authority delegated under
14 subsection (a)(2)".

15 **Sec. 142. Effective date.**

16 The amendments made by this subtitle shall take effect 180 days after enactment.

17 **SUBTITLE F - FEDERAL HUMAN RESOURCES HIRING FLEXIBILITY**

18 **Sec. 151. Employment flexibility amendments.**

19 Chapter 33 of title 5, United States Code, is amended--

20 (1) in section 3304(a)--

21 (A) in paragraph (2) by striking the period and inserting "; and"; and

1 (B) by adding at the end the following paragraph:

2 "(3) authority for agencies to appoint, without regard to the provisions of sections 3309
3 through 3318, candidates directly to positions for which--

4 "(A) public notice has been given; and

5 "(B) the Office of Personnel Management has determined that there exists a
6 severe shortage of candidates or there is a critical hiring need. The Office shall
7 prescribe, by regulation, criteria for identifying such positions and may delegate
8 authority to make determinations under such criteria.";

9 (2) by inserting after section 3318 the following new section:

10 **"§3319. Alternative ranking and selection procedures**

11 "(a) Notwithstanding section 2302(b)(11) or any other provision of this chapter--

12 "(1) the Office, in exercising its authority under section 3304; or

13 "(2) an agency to which the Office has delegated examining authority under section
14 1104(a)(2)-- may establish category rating systems for evaluating job applicants for positions in
15 the competitive service, under which qualified candidates are divided into two or more quality
16 categories, consistent with regulations prescribed by the Office of Personnel Management,
17 rather than assigned individual numerical ratings.

18 "(b) Within each quality category established under subsection (a), preference-eligibles shall be
19 listed ahead of individuals who are not preference eligibles. For other than scientific and professional
20 positions at GS-9 (equivalent or higher), qualified preference-eligibles who have a compensable
21 service-connected disability of 10 percent or more shall be listed in the highest quality category.

1 (c) An appointing official may select any applicant in the highest quality category or, if fewer
2 than three candidates have been assigned to the highest quality category, in a merged category
3 consisting of the highest and the second highest quality categories. Notwithstanding the preceding
4 sentence, the appointing official may not pass over a preference-eligible in the same category from
5 which selection is made, unless the requirements of section 3317(b) or 3318(b), as applicable, are
6 satisfied.

7 (d) The Office of Personnel Management may prescribe such regulations as it considers
8 necessary to carry out the provisions of this section."; and

9 (3) in the table of sections by amending the item relating to section 3319 to read as
10 follows:

11 "3319. Alternative ranking and selection procedures."

12 **TITLE II - BUDGETING AND MANAGING FOR RESULTS: FULL FUNDING FOR**
13 **FEDERAL RETIREE COSTS**
14 **SUBTITLE A - ACCRUAL FUNDING OF PENSIONS AND RETIREMENT PAY**
15 **FOR FEDERAL EMPLOYEES**

16 **Sec. 201. Civil Service Retirement System.**

17 (a) Civil Service Retirement and Disability Fund.---Chapter 83 of title 5, United States Code,
18 is amended--

19 (1) in section 8331--

20 (A) in paragraph (17)--

21 (i) by striking "normal cost" and inserting "normal cost percentage"; and

1 (ii) by inserting "and standards (using dynamic assumptions)" after
2 "practice";

3 (B) by amending paragraph (18) to read as follows:

4 "(18) 'Fund balance' means the current net assets of the Fund available
5 for payment of benefits, as determined by the Office in accordance with
6 appropriate accounting standards, but does not include any amount attributable
7 to -

8 "(A) the Federal Employees' Retirement System; or

9 "(B) contributions made under the Federal Employees'
10 Retirement Contribution Temporary Adjustment Act of 1983 by or on
11 behalf of any individual who became subject to the Federal Employees'
12 Retirement System;"

13 (C) by amending paragraph (19) to read as follows:

14 "(19) 'accrued liability' means the estimated excess of the present value
15 of all benefits payable from the Fund to employees and Members, and former
16 employees and Members, subject to this subchapter, and their survivors, over
17 the present value of deductions to be withheld from the future basic pay of
18 employees and Members currently subject to this subchapter and of future
19 agency contributions to be made in their behalf;"

20 (D) in paragraph (27) by striking "and" at the end;

21 (E) in paragraph (28) by striking the period at the end and inserting a

1 semicolon; and

2 (F) by adding at the end the following paragraphs:

3 "(29) 'dynamic assumptions' means economic assumptions that are used
4 in determining actuarial costs and liabilities of a retirement system and in
5 anticipating the effects of long-term future—

6 "(A) investment yields;

7 "(B) increases in rates of basic pay; and

8 "(C) rates of price inflation; and

9 "(30) 'unfunded liability' means the estimated excess of—

10 "(A) the actuarial present value of all future benefits payable
11 from the Fund under this subchapter based on the service of current or
12 former employees or Members, over

13 "(B) the sum of—

14 "(i) the actuarial present value of deductions to be
15 withheld from the future basic pay of employees and Members
16 currently subject to this chapter pursuant to section 8334;

17 "(ii) the actuarial present value of the future
18 contributions to be made pursuant to section 8334 with respect
19 to employees and Members currently subject to this
20 subchapter;

21 "(iii) the Fund balance, as defined in paragraph (18), as

1 of the date the unfunded liability is determined; and

2 "(iv) any other appropriate amount, as determined by
3 the Office of Personnel Management in accordance with
4 generally accepted actuarial practices and principles.";

5 (2) in section 8334--

6 (A) in subsection (a)(1)--

7 (i) by striking the last two sentences;

8 (ii) by redesignating that subsection, as so amended, as (a)(1)(A); and

9 (iii) by adding at the end the following new subparagraphs:

10 "(B) Except as provided in subparagraph (E), each employing
11 agency having any employees or Members subject to subparagraph (A)
12 shall contribute from amounts available for salaries and expenses an
13 amount equal to the sum of--

14 "(i) the product of--

15 "(I) the normal cost percentage, as determined
16 for employees (other than employees covered by
17 clause (ii)), multiplied by

18 "(II) the aggregate amount of basic pay payable
19 by the agency, for the period involved, to employees
20 (under subclause (I)) who are within such agency; and

21 "(ii) the product of--

1 "(I) the normal cost percentage, as determined
2 for Members, Congressional employees, law
3 enforcement officers, firefighters, air traffic controllers,
4 bankruptcy judges, Court of Federal Claims judges,
5 United States magistrates, judges of the United States
6 Court of Appeals for the Armed Forces, members of
7 the Capitol Police, nuclear materials couriers, and
8 members of the Supreme Court Police, multiplied by

9 "(II) the aggregate amount of basic pay payable
10 by the agency for the period involved, to employees
11 and Members (under subclause (I)) who are within
12 such agency.

13 "(C) In determining the normal cost percentage to be applied
14 under subparagraph (B), amounts provided for under subparagraph (A)
15 shall be taken into account.

16 "(D) Contributions under this paragraph shall be paid—

17 "(i) in the case of law enforcement officers, firefighters,
18 air traffic controllers, bankruptcy judges, Court of Federal
19 Claims judges, United States magistrates, judges of the United
20 States Court of Appeals for the Armed Forces, members of the
21 Supreme Court Police, nuclear materials couriers and other

1 employees, from the appropriations or fund used to pay such
2 law enforcement officers, firefighters, air traffic controllers,
3 bankruptcy judges, Court of Federal Claims judges, United
4 States magistrates, judges of the United States Court of
5 Appeals for the Armed Forces, members of the Supreme
6 Court Police, nuclear materials couriers and other employees,
7 respectively;

8 "(ii) in the case of elected officials, from an
9 appropriation or fund available for payment of other salaries of
10 the same office or establishment; and

11 "(iii) in the case of employees of the legislative branch
12 paid by the Clerk of the House of Representatives, from the
13 contingent fund of the House.

14 "(E) In the case of the United States Postal Service, the
15 Metropolitan Washington Airports Authority, and the government of
16 the District of Columbia an amount equal to that withheld under
17 subparagraph (A) shall be contributed from the appropriation or fund
18 used to pay the employee."; and

19 (B) in subsection (k)--

20 (i) in paragraph (1)--

21 (I) in subparagraph (A) by striking "the first sentence of

1 subsection (a)(1) of this section" and inserting "subsection (a)(1)(A)";

2 and

3 (II) by amending subparagraph (B) to read as follows:

4 "(B) the amount of the contribution under subsection

5 (a)(1)(B) shall be the amount which would have been

6 contributed under such subsection if this subsection had not

7 been enacted."; and

8 (ii) in paragraph (2)(C)(iii) by striking "the first sentence of subsection

9 (a)(1)" and inserting "subsection (a)(1)(A)"; and

10 (3) in section 8348–

11 (A) by repealing subsection (f);

12 (B) by amending subsection (g) to read as follows:

13 "(g)(1)(A) Not later than June 30, 2002, the Office of the Actuary shall

14 determine the unfunded liability of the Fund, as of September 30, 2001,

15 attributable to benefits payable under this chapter and make recommendations

16 regarding its liquidation. After considering such recommendations, the Office

17 shall establish an amortization schedule, including a series of annual installments

18 commencing September 30, 2002, which provides for the liquidation of such

19 liability by September 30, 2041.

20 "(B) The Office shall redetermine the unfunded liability of the Fund as of

21 the close of the fiscal year, for each fiscal year beginning after September 30,

1 2001, through the fiscal year ending September 30, 2036, and shall establish a
2 new amortization schedule, including a series of annual installments commencing
3 on September 30 of the subsequent fiscal year, which provides for the
4 liquidation of such liability by September 30, 2041.

5 "(C) The Office shall redetermine the unfunded liability of the Fund as
6 of the close of the fiscal year for each fiscal year beginning after September 30,
7 2036, and shall establish a new amortization schedule, including a series of
8 annual installments commencing on September 30 of the subsequent fiscal year,
9 which provides for the liquidation of such liability over five years.

10 "(D) Amortization schedules established under this paragraph shall be
11 set in accordance with generally accepted actuarial practices and principles,
12 with interest computed at the rate used in the most recent valuation of the Civil
13 Service Retirement System.

14 "(2) At the end of each fiscal year, beginning on September 30, 2002,
15 the Office shall notify the Secretary of the Treasury of the amount of the first
16 installment under the most recent amortization schedule established under
17 paragraph (1). Before closing the accounts for the fiscal year, the Secretary
18 shall credit that amount to the Fund, as a Government contribution, out of any
19 money in the Treasury of the United States not otherwise appropriated.

20 "(3) For the purpose of carrying out paragraph (1) with respect to any
21 fiscal year, the Office may—

1 "(A) require the Board of Actuaries of the Civil Service
2 Retirement System to make actuarial determinations and valuations,
3 make recommendations, and maintain records in accordance with
4 section 8347(f); and

5 "(B) use the latest actuarial determinations and valuations made
6 by such Board of Actuaries.";

7 (C) in subsections (h), (i), and (m) by striking "unfunded" and inserting
8 "accrued" each time it appears; and

9 (D) by adding at the end the following new subsection:

10 "(n) Under regulations prescribed by the Office, the head of an agency
11 may request reconsideration of any amount determined to be payable with
12 respect to such agency under section 8334(a)(1)(B)-(D). Any such request
13 shall be referred to the Board of Actuaries of the Civil Service Retirement
14 System. The Board of Actuaries shall review the computations of the Office
15 and may make any adjustment with respect to any such amount which the
16 Board determines appropriate. A determination by the Board of Actuaries
17 under this subsection shall be final."

18 (b) Government Contributions.---Section 8423 of title 5, United States Code, is amended--

19 (1) in subsection (a)(2) by striking "section 8422" and inserting "section 8422(a)"; and

20 (2) in subsection (b)(2) by striking "equal annual installments" and inserting "annual
21 installments set in accordance with generally accepted actuarial practices and principles".

1 **Sec. 202. Central Intelligence Agency Retirement and Disability System**

2 The Central Intelligence Agency Retirement Act, Public Law 88-643, (50 U.S.C. 2001 *et*
3 *seq.*), 78 Stat. 1043, as amended, is further amended--

4 (a) in section 101 (50 U.S.C. 2001)--

5 (1) by amending paragraph (5) to read as follows--

6 "(5) Unfunded liability

7 "The term 'unfunded liability' means the estimated excess of--

8 "(A) the actuarial present value of all future benefits payable
9 from the Fund under title II of this Act based on the service of current
10 or former participants, over

11 "(B) the sum of--

12 "(i) the actuarial present value of deductions to be
13 withheld from the future basic pay of participants currently
14 subject to title II of this Act pursuant to section 211;

15 "(ii) the actuarial present value of the future
16 contributions to be made pursuant to section 211 with respect
17 to participants currently subject to title II of this Act;

18 "(iii) the Fund balance, as defined in paragraph (4), as
19 of the date the unfunded liability is determined; and

20 "(iv) any other appropriate amount, as determined by
21 the Director in accordance with generally accepted actuarial

1 practices and principles.";

2 (2) in paragraph (6)--

3 (A) by striking "normal cost" and inserting "normal cost percentage"; and

4 (B) by inserting "and standards (using dynamic assumptions)" after "practice";

5 and

6 (3) by adding at the end the following paragraph:

7 "(10) Dynamic assumptions

8 "The term 'dynamic assumptions' means economic assumptions that are
9 used in determining actuarial costs and liabilities of a retirement system and in
10 anticipating the effects of long-term future--

11 "(A) investment yields;

12 "(B) increases in rates of basic pay; and

13 "(C) rates of price inflation.";

14 (b) in section 202 (50 U.S.C. 2012) by adding at the end the following:

15 "The Fund is appropriated for the payment of benefits as provided by this title.";

16 (c) by amending section 211(a)(2) (50 U.S.C. 2021) to read as follows:

17 "(2) Agency contributions

18 "The Agency shall contribute to the Fund the amount computed in a manner
19 similar to that used under section 8334(a) of title 5, United States Code, pursuant to
20 determinations of the normal cost percentage of the Central Intelligence Agency
21 Retirement and Disability System by the Director. Contributions under this paragraph

1 shall be paid from amounts available for salaries and expenses."; and

2 (d) in section 261 (50 U.S.C. 2091)--

3 (1) by repealing subsection (c) and (d) and redesignating subsection (e) as
4 subsection (c);

5 (2) by amending subsection (c), as redesignated, to read as follows:

6 "(c)(1) Not later than June 30, 2002, the Director shall cause to be
7 made actuarial valuations of the Fund that determine the unfunded liability of the
8 Fund, as of September 30, 2001, attributable to benefits payable under this title
9 and make recommendations regarding its liquidation. After considering such
10 recommendations, the Director shall establish an amortization schedule,
11 including a series of annual installments commencing September 30, 2002,
12 which provides for the liquidation of such liability by September 30, 2041.

13 "(2) The Director shall redetermine the unfunded liability of the Fund as
14 of the close of the fiscal year, for each fiscal year beginning after September 30,
15 2001, through the fiscal year ending September 30, 2036, and shall establish a
16 new amortization schedule, including a series of annual installments commencing
17 on September 30 of the subsequent fiscal year, which provides for the
18 liquidation of such liability by September 30, 2041.

19 "(3) The Director shall redetermine the unfunded liability of the Fund as
20 of the close of the fiscal year for each fiscal year beginning after September 30,
21 2036, and shall establish a new amortization schedule, including a series of

1 annual installments commencing on September 30 of the subsequent fiscal year,
2 which provides for the liquidation of such liability over five years.

3 "(4) Amortization schedules established under this subsection shall be
4 set in accordance with generally accepted actuarial practices and principles,
5 with interest computed at the rate used in the most recent valuation of the Civil
6 Service Retirement and Disability System."; and

7 (3) by adding at the end the following new subsection:

8 "(d) At the end of each fiscal year, beginning on September 30, 2002,
9 the Director shall notify the Secretary of the Treasury of the amount of the first
10 installment under the most recent amortization schedule established under
11 subsection (c). Before closing the accounts for that fiscal year, the Secretary
12 shall credit that amount to the Fund, as a Government contribution, out of any
13 money in the Treasury of the United States not otherwise appropriated. For
14 the purposes of Section 504 of the National Security Act of 1947, this amount
15 shall be considered authorized."

16 (e) by adding at the end of the Central Intelligence Agency Retirement Act (50 U.S.C.

17 2001 *et seq.*) the following new section 308:

18 **§308. Full Funding of Retiree Costs for Employees Designated under Section 302**

19 (a) In addition to other government contributions required by law, the Agency shall
20 contribute to the Civil Service Retirement and Disability fund (hereinafter in this section referred
21 to as the "Fund") amounts calculated in accordance with section 8423 of title 5, United States

1 Code, based on the projected number of employees to be designated pursuant to section 302
2 of this Act. In addition, the Agency, in a manner similar to that established for employee
3 contributions to the Fund by section 8422 of title 5, United States Code, will contribute an
4 amount equal to the difference between that which would be contributed by the number of
5 employees projected to be designated under section 302 and the amounts that are actually
6 being deducted and contributed from the basic pay of an equal number of employees pursuant
7 to section 8422. The amounts of the Agency's contributions under this subsection shall be
8 determined by the Director of the Office of Personnel Management, in consultation with the
9 Director, and shall be paid by the Agency from funds available for salaries and expenses.
10 Agency employees designated pursuant to section 302 of this Act shall, commencing with such
11 designation, have deducted from their basic pay the full amount required by section 8422 of title
12 5, United States Code, and such deductions shall be contributed to the Fund.

13 (b) (1) The Director of the Office of Personnel Management, in consultation with the
14 Director, shall determine the total amount of unpaid contributions (government and employee
15 contributions) and interest attributable to the number of individuals employed with the Agency
16 on September 30, 2001, who are projected to be designated under section 302 of this Act, but
17 are not yet designated under that section as of that date. The amount shall be referred to as the
18 section 302 unfunded liability.

19 (2) Not later than June 30, 2002, the Director of the Office of Personnel
20 Management, in consultation with the Director, shall establish an amortization schedule,
21 setting forth a series of annual installments commencing September 30, 2002, which

1 provides for the liquidation of the section 302 unfunded liability by September 30,
2 2011.

3 (3) At the end of each fiscal year, beginning on September 30, 2002, the
4 Director shall notify the Secretary of the Treasury of the amount of the annual
5 installment under the amortization schedule established under paragraph (2) of this
6 subsection. Before closing the accounts for that fiscal year, the Secretary shall credit
7 that amount to the Fund, out of any money in the Treasury of the United States not
8 otherwise appropriated.

9 (c) Amounts paid by the Agency pursuant to this section are deemed to be specifically
10 authorized by the Congress for the purposes of section 504 of the National Security Act of
11 1947.

12 **Sec. 203. Foreign Service Retirement and Disability System.**

13 Chapter 8 of Title I of the Foreign Service Act of 1980, Public Law 96-465, (22 U.S.C.
14 4041 *et seq.*) 94 Stat. 2071, as amended, is further amended--

15 (a) in section 804 (22 U.S.C. 4044)--

16 (1) by amending paragraph (5) to read as follows:

17 "(5) 'normal cost percentage' means the entry-age normal cost computed in
18 accordance with generally accepted actuarial practice and standards (using dynamic
19 assumptions) and expressed as a level percentage of aggregate basic pay;"

20 (2) by amending paragraph (14) to read as follows:

21 "(14) 'unfunded liability' means the estimated excess of--

1 "(A) the actuarial present value of all future benefits payable from the
2 Fund under this part based on the service of current or former participants,
3 over

4 "(B) the sum of–

5 " (i) the actuarial present value of deductions to be withheld
6 from the future basic pay of participants currently subject to this part
7 pursuant to section 805;

8 " (ii) the actuarial present value of the future contributions to be
9 made pursuant to section 805 with respect to participants currently
10 subject to this part;

11 " (iii) the Fund balance, as defined in paragraph (7), as of the
12 date the unfunded liability is determined, excluding any amount
13 attributable to the Foreign Service Pension System, or contributions
14 made under the Federal Employees' Retirement Contribution
15 Temporary Adjustment Act of 1983 by or on behalf of any individual
16 who became subject to the Foreign Service Pension System; and

17 " (iv) any other appropriate amount, as determined by the
18 Secretary of the Treasury in accordance with generally accepted
19 actuarial practices and principles."; and

20 (3) by adding at the end the following new paragraph:

21 "(15) 'dynamic assumptions' means economic assumptions that are used in

1 determining actuarial costs and liabilities of a retirement system and in anticipating the
2 effects of long-term future—

3 "(A) investment yields;

4 "(B) increases in rates of basic pay; and

5 "(C) rates of price inflation.";

6 (b) in section 852 (22 U.S.C. 4071a)--

7 (1) in paragraph (4)--

8 (A) by striking "normal cost" and inserting "normal cost percentage"; and

9 (B) by striking "by the Secretary of State";

10 (2) in paragraph (7)--

11 (A) by striking "supplemental" and inserting "unfunded";

12 (B) in subparagraph (B)(i) by striking "(I)" and "and (II) contributions for past
13 civilian and military service"; and

14 (C) in subparagraph (B)(ii) by inserting before the semicolon "with respect to
15 participants currently subject to this part"; and

16 (3) by adding at the end the following new paragraph:

17 "(9) 'dynamic assumptions' means economic assumptions that are used in
18 determining actuarial costs and liabilities of a retirement system and in anticipating the
19 effects of long-term future—

20 "(A) investment yields;

21 "(B) increases in rates of basic pay; and

1 "(C) rates of price inflation.";

2 (c) in section 805(a)(1) (22 U.S.C.4045(a)(1))--

3 (1) by striking the second sentence;

4 (2) by redesignating that subsection, as so amended, as (a)(1)(A);

5 (3) by redesignating the last sentence of that subsection, as so amended as (a)(1)(C);

6 (4) by inserting after subparagraph (A) the following new subparagraph:

7 "(B) Each employing agency having participants shall contribute to the Fund the
8 amount computed in a manner similar to that used under section 8334(a) of title 5,
9 United States Code, pursuant to determinations of the normal cost percentage of the
10 Foreign Service Retirement and Disability System. Contributions under this
11 subparagraph shall be paid from the appropriations or fund used for payment of the
12 salary of the participant.";

13 (5) in subsection (a)(2)(A) by striking "An equal amount shall be contributed by the
14 Department" and inserting in its place "Each employing agency having participants shall
15 contribute to the Fund the amount computed in a manner similar to that used under section
16 8334(a) of title 5, United States Code, pursuant to determinations of the normal cost
17 percentage of the Foreign Service Retirement and Disability System"; and

18 (6) in subsection (a)(2)(B) by striking "An equal amount shall be contributed by the
19 Department" and inserting in its place "Each employing agency having participants shall
20 contribute to the Fund from amounts available for salaries and expenses the amount computed
21 in a manner similar to that used under section 8334(a) of title 5, United States Code, pursuant

1 to determinations of the normal cost percentage of the Foreign Service Retirement and
2 Disability System";

3 (d) by repealing sections 821 and 822 (22 U.S.C. 4061 and 4062) and by adding the following
4 new section:

5 "§821. Unfunded liability

6 "(a)(1) Not later than June 30, 2002, the Secretary of State shall cause
7 to be made actuarial valuations of the Fund that determine the unfunded liability
8 of the Fund, as of September 30, 2001, attributable to benefits payable under
9 this subchapter and make recommendations regarding its liquidation. After
10 considering such recommendations, the Secretary of State shall establish an
11 amortization schedule, including a series of annual installments commencing
12 September 30, 2002, which provides for the liquidation of such liability by
13 September 30, 2041.

14 "(2) The Secretary of State shall redetermine the unfunded liability of
15 the Fund as of the close of the fiscal year, for each fiscal year beginning after
16 September 30, 2001, through the fiscal year ending September 30, 2036, and
17 shall establish a new amortization schedule, including a series of annual
18 installments commencing on September 30 of the subsequent fiscal year, which
19 provides for the liquidation of such liability by September 30, 2041.

20 "(3) The Secretary of State shall redetermine the unfunded liability of
21 the Fund as of the close of the fiscal year for each fiscal year beginning after

1 September 30, 2036, and shall establish a new amortization schedule, including
2 a series of annual installments commencing on September 30 of the subsequent
3 fiscal year, which provides for the liquidation of such liability over five years.

4 "(4) Amortization schedules established under this subsection shall be
5 set in accordance with generally accepted actuarial practices and principles,
6 with interest computed at the rate used in the most recent valuation of the
7 Foreign Service Retirement and Disability System.

8 "(b) At the end of each fiscal year, beginning on September 30, 2002,
9 the Secretary of State shall notify the Secretary of the Treasury of the amount
10 of the first installment under the most recent amortization schedule established
11 under paragraph (1). Before closing the accounts for that fiscal year, the
12 Secretary of the Treasury shall credit that amount to the Fund, as a Government
13 contribution, out of any money in the Treasury of the United States not
14 otherwise appropriated.";

15 (e) in section 857 (22 U.S.C. 4071f(b)(1)) by striking "equal annual installments" and inserting
16 "annual installments set in accordance with generally accepted actuarial practices and principles";

17 (f) in section 859 (22 U.S.C. 4071h(b)(1)) by adding "percentage" after "normal cost";

18 (g) in section 802 (22 U.S.C. 4042) by adding at the end the following:

19 "The Fund is appropriated for the payment of benefits as provided by this subchapter.";

20 and

21 (h) in section 818 (22 U.S.C. 4058) by striking "System" and inserting "Systems under this

1 subchapter".

2 **Sec. 204. Public Health Service Commissioned Corps Retirement System.**

3 Title II of the Public Health Service Act (42 U.S.C. 202 *et seq.*) is amended by adding at the end the
4 following new part:

5 "PART C—PUBLIC HEALTH SERVICE COMMISSIONED CORPS RETIREMENT SYSTEM

6 "ESTABLISHMENT AND PURPOSE OF FUND

7 "Sec. 251. There is established on the books of the Treasury a fund to be known as the Public
8 Health Service Commissioned Corps Retirement Fund (hereinafter in this Part referred to as the
9 'Fund'), which shall be administered by the Secretary of Health and Human Services (hereinafter in this
10 Part referred to as the 'Secretary'). The Fund shall be used for the accumulation of funds in order to
11 finance on an actuarially sound basis liabilities of the Department of Health and Human Services for
12 benefits payable on account of retirement, disability, or death to commissioned officers of the Public
13 Health Service and to their survivors pursuant to Part A of this title.

14 "ASSETS OF THE FUND

15 "Sec. 252. There shall be deposited into the Fund the following, which shall constitute the
16 assets of the Fund:

17 "(1) Amounts paid into the Fund under section 255.

18 "(2) Any return on investment of the assets of the Fund.

19 "(3) Amounts transferred into the Fund pursuant to section 257(d) of the Public Health
20 Service Commissioned Corps Retirement Funding Reform Act of 2001.

21 "PAYMENT FROM THE FUND

1 "Sec. 253. There shall be paid from the Fund benefits payable on account of retirement,
2 disability, or death to commissioned officers of the Public Health Service and to their survivors pursuant
3 to part A of this title.

4 "DETERMINATION OF CONTRIBUTIONS TO THE FUND

5 "Sec. 254. (a)(1) Not later than June 30, 2002, the Secretary shall determine the unfunded
6 liability of the Fund attributable to service performed as of September 30, 2001, which is 'active
7 service' for the purpose of section 212. The Secretary shall establish an amortization schedule,
8 including a series of annual installments commencing September 30, 2002, which provides for the
9 liquidation of such liability by September 30, 2041.

10 "(2) The Secretary shall redetermine the unfunded liability of the Fund as of the
11 close of the fiscal year, for each fiscal year beginning after September 30, 2001,
12 through the fiscal year ending September 30, 2036, and shall establish a new
13 amortization schedule, including a series of annual installments commencing on
14 September 30 of the subsequent fiscal year, which provides for the liquidation of such
15 liability by September 30, 2041.

16 "(3) The Secretary shall redetermine the unfunded liability of the Fund as of the
17 close of the fiscal year for each fiscal year beginning after September 30, 2036, and
18 shall establish a new amortization schedule, including a series of annual installments
19 commencing on September 30 of the subsequent fiscal year, which provides for the
20 liquidation of such liability over 5 years.

21 "(b) The Secretary shall determine each fiscal year, in sufficient time for inclusion in the budget

1 request for the following fiscal year, the total amount of Department of Health and Human Services
2 contributions to be made to the Fund during the fiscal year under section 255(a). That amount shall be
3 the sum of--

4 "(1) the product of--

5 "(A) the current estimate of the value of the single level percentage of basic pay
6 to be determined under subsection (c)(1) at the time of the most recent actuarial
7 valuation under subsection (c); and

8 "(B) the total amount of basic pay expected to be paid during that fiscal year to
9 commissioned officers of the Public Health Service on active duty (other than active
10 duty for training); and

11 "(2) the product of--

12 "(A) the current estimate of the value of the single level percentage of basic pay
13 and of compensation (paid pursuant to section 206 of title 37, United States Code) to
14 be determined under subsection (c)(2) at the time of the most recent actuarial valuation
15 under subsection (c); and

16 "(B) the total amount of basic pay and of compensation (paid pursuant to
17 section.206 of title 37, United States Code) expected to be paid during that fiscal year
18 to commissioned officers of the Reserve Corps of the Public Health Service (other than
19 officers on full-time duty other than for training) who are not otherwise described in
20 subparagraph (A).

21 "(c) Not less often than every four years thereafter (or by the fiscal year end prior to the

1 the sum of--

2 "(1) the product of--

3 "(A) the level percentage of basic pay determined using all the methods and
4 assumptions approved for the most recent (as of the first day of the current fiscal year)
5 actuarial valuation under sections 254(c)(1) (except that any statutory change affecting
6 benefits payable on account of retirement, disability, or death to commissioned officers
7 or their survivors that is effective after the date of that valuation and on or before the
8 first day of the current fiscal year shall be used in such determination); and

9 "(B) the total amount of basic pay accrued for that month by commissioned
10 officers of thePublic Health Service on active duty (other than active duty for training);
11 and

12 "(2) the product of--

13 "(A) the level percentage of basic pay and of compensation (paid pursuant to section
14 206 of title 37, United States Code) determined using all the methods and assumptions
15 approved for the most recent (as of the first day of the current fiscal year) actuarial valuation
16 under section 254(c)(2) (except that any statutory change affecting benefits payable on account
17 of retirement, disability, or death to commissioned officers or their survivors that is effective
18 after the date of that valuation and on or before the first day of the current fiscal year shall be
19 used in such determination); and

20 "(B) the total amount of basic pay and of compensation (paid pursuant to section 206
21 of title 37, United States Code) accrued for that month by commissioned officers of the

1 Reserve Corps of the Public Health Service (other than officers on full-time duty other than for
2 training).

3 "(b) At the end of each fiscal year, beginning on September 30, 2002, the Secretary shall
4 certify to the Secretary of the Treasury the amount of the first installment under the most recent
5 amortization schedule established under section 254(a). Before closing the accounts for that fiscal year,
6 the Secretary of the Treasury shall pay into the Fund from the General Fund of the Treasury the amount
7 so certified. Such payment shall be the contribution to the Fund for the fiscal year beginning on the
8 following day";

9 "INVESTMENT OF ASSETS OF FUND

10 "Sec. 256. The Secretary may request the Secretary of the Treasury to invest such portion of
11 the Fund as is not, in the judgment of the Secretary, required to meet the current needs of the Fund.
12 Such investments shall be made by the Secretary of the Treasury in public debt securities with maturities
13 suitable to the needs of the Fund, as determined by the Secretary, and bearing interest at rates
14 determined by the Secretary of the Treasury, taking into consideration current market yields on
15 outstanding marketable obligations of the United States of comparable maturities. The income on such
16 investments shall be credited to and form a part of the Fund.

17 "IMPLEMENTATION YEAR EXCEPTIONS

18 "Sec. 257. (a) To avoid funding shortfalls in the first year should formal actuarial determinations
19 not be available in time for budget preparation, the amounts used in the first year in sections
20 255(a)(1)(A) and 255(a)(2)(A) shall be set equal to those estimates in sections 254(b)(1)(A) and
21 254(b)(2)(A) if final determinations are not available. The original unfunded liability as defined in section

1 254(a) shall include an adjustment to correct for this difference between the formal actuarial
2 determinations and the estimates in sections 254(b)(1)(A) and 254(b)(2)(A).

3 (b) Conforming Amendments.--

4 (1) Condition of detail.--Section 214 of the Public Health Service Act (42

5 U.S.C. 215) is amended by adding at the end the following new subsection:

6 "(e) The Secretary shall condition any detail under subsection (a), (b), or (c) upon the
7 agreement of the executive department, State, subdivision, Committee of the Congress, or institution
8 concerned to pay to the Department of Health and Human Services, in advance or by way of
9 reimbursement, for the full cost of the detail including that portion of the contributions under section
10 255(a) that is attributable to the detailed personnel."

11 (2) Exemption from sequestration.--Section 255(g)(1)(B) of the Balanced Budget and
12 Emergency Deficit Control Act of 1985 (2 U.S.C. 905(g)(1)(B)) is amended--

13 (A) by inserting after the item relating to the "Pensions for former Presidents"

14 the following item: "Public Health Service Commissioned Corps Retirement Fund (75-
15 8274-0-7-602);", and

16 Sec. 255(g)(1)(A) of the Balanced Budget and Emergency Deficit Control Act of
17 1985 (2 U.S.C. 905(g)(1)(A)) is amended--

18 (B) by inserting after the item relating to "payment to the foreign service
19 retirement and disability fund" the following item: "Payment to the Public Health Service
20 Commissioned Corps Retirement Fund (75-0380-0-1-551);".

21 (c) Transfer of Appropriations.--There shall be transferred into the Fund on October 1,

1 2002, any obligated or unobligated balances of appropriations made to the Department of
2 Health and Human Services that are currently available for benefits payable on account of
3 retirement, disability, or death to commissioned officers of the Public Health Service and to
4 their survivors pursuant to part A of title II of the Public Health Service Act, and amounts so
5 transferred shall be part of the assets of the Fund.

6 **Sec. 205. National Oceanic and Atmospheric Administration Commissioned Officer Corps**
7 **Retirement System.**

8 Title 33, United States Code, is amended by inserting after section 853g the following new
9 section 853g-1:

10 "(a)(1) Establishment and Purpose of the NOAA Commissioned Officer Corps Retirement
11 Fund. There is established on the books of the Treasury a fund to be known as the National Oceanic
12 and Atmospheric Administration Commissioned Officer Corps Retirement Fund (hereinafter in this
13 section referred to as the 'Fund'), which shall be administered by the Secretary of Commerce
14 (hereinafter in this section referred to as 'the Secretary'). The Fund shall be used for the accumulation
15 of funds in order to finance on an actuarially sound basis liabilities of the Department of Commerce
16 under military retirement and survivor benefit programs for the commissioned officers corps of the
17 National Oceanic and Atmospheric Administration (hereinafter referred to as 'NOAA').

18 (2) The term "military retirement and survivor benefit program" means —

19 (A) the provisions of this title and title 10 creating entitlement to, or determining,
20 the amount of retired pay;

21 (B) the programs under the jurisdiction of the Department of Defense providing

1 annuities for survivors and members and former members of the armed forces, including
2 chapter 73 of title 10, section 4 of Public Law No. 92-425, and section 5 of Public
3 Law No. 96-202, as made applicable to the NOAA Commissioned Officer Corps by
4 section 857a of title 33, United States Code.

5 "(b) Assets of the Fund. There shall be deposited into the Fund the following, which shall
6 constitute the assets of the Fund:

7 (1) Amounts paid into the Fund under section 105.

8 (2) Any return on investment of the assets of the Fund.

9 (3) Amounts transferred into the Fund pursuant to section 108(c) of this Act.

10 (c) Payment from the Fund. There shall be paid from the Fund benefits payable on account of
11 military retirement and survivor benefit programs to commissioned officers of the NOAA
12 Commissioned Officer Corps and their survivors.

13 (d)(1)(A) Determination of Contributions to the Fund. Not later than June 30, 2002, the
14 Secretary shall determine the unfunded liability of the Fund attributable to service performed as of
15 September 30, 2001, which is 'active service' for the purpose of section 212. The Secretary shall
16 establish an amortization schedule, including a series of annual installments commencing September 30,
17 2002, which provides for the liquidation of such liability by September 30, 2041.

18 "(B) The Secretary shall redetermine the unfunded liability of the Fund as of the
19 close of the fiscal year, for each fiscal year beginning after September 30, 2001,
20 through the fiscal year ending September 30, 2036, and shall establish a new
21 amortization schedule, including a series of annual installments commencing on

1 September 30 of the subsequent fiscal year, which provides for the liquidation of such
2 liability by September 30, 2041.

3 "(C) The Secretary shall redetermine the unfunded liability of the Fund as of the
4 close of the fiscal year for each fiscal year beginning after September 30, 2036, and
5 shall establish a new amortization schedule, including a series of annual installments
6 commencing on September 30 of the subsequent fiscal year, which provides for the
7 liquidation of such liability over 5 years.

8 "(2) The Secretary shall determine each fiscal year, in sufficient time for inclusion in the
9 budget request for the following fiscal year, the total amount of Department of Commerce
10 contributions to be made to the Fund during that fiscal year under (e)(a). The amount shall be
11 the product of --

12 "(A) the current estimate of the value of the single level percentage of basic pay to be
13 determined under subsection (b) at the time of the most recent actuarial valuation under
14 subsection (b); and

15 "(B) the total amount of basic pay expected to be paid during that fiscal year to
16 commissioned officers of NOAA on active duty.

17 "(3) Not less often than every four years (or by the fiscal year end prior to the effective
18 date of any statutory change affecting benefits payable on account of retirement, disability, or
19 death to commissioned officers or their survivors), the Secretary shall carry out an actuarial
20 valuation of benefits payable on account of military retirement and survivor benefit programs to
21 commissioned officers of the NOAA Commissioned Officer Corps and to their survivors. Each

1 such actuarial valuation shall be signed by an enrolled Actuary and shall include a determination
2 (using the aggregate entry-age normal cost method) of a single level percentage of basic pay for
3 commissioned officers of NOAA on active duty.

4 "(4) All determinations under this section shall be in accordance with generally accepted
5 actuarial principles and practices, and, where appropriate, shall follow the general pattern of
6 methods and assumptions approved by the Department of Defense Retirement Board of
7 Actuaries.

8 "(5) The Secretary shall provide for the keeping of such records as are necessary for
9 determining the actuarial status of the Fund.

10 (e)(1) Payments into the Fund. From amounts appropriated to the National Oceanic
11 Atmospheric Administration for salaries and expenses, the Secretary shall pay into the Fund at the end
12 of each month the amount that is the product of --

13 "(A) the level percentage of basic pay determined using all the methods and
14 assumptions approved for the most recent (as of the first day of the current fiscal year)
15 actuarial valuation under section 5(c)(1) (except that any statutory change affecting
16 benefits payable on account of military retirement and survivor benefit programs to
17 commissioned officers of the NOAA commissioned Officer Corps and to their
18 survivors that is effective after the date of that valuation and on or before the first day of
19 the current fiscal year shall be used in such determination); and

20 "(B) the total amount of basic pay accrued for that month by commissioned
21 officers of NOAA on active duty.

1 "(2)(A) At the beginning of each fiscal year, the Secretary shall determine the sum of –

2 (i) the amount of the payment for that year under the amortization of the original
3 unfunded liability of the Fund;

4 (ii) the amount (including any negative amount) for that year under the most
5 recent amortization schedule determined by the Secretary for the amortization of any
6 cumulative actuarial gain or loss to the Fund, resulting from changes in benefits; and

7 (iii) the amount (including any negative amount) for that year under the most
8 recent amortization schedule determined by the Secretary for the amortization or any
9 cumulative actuarial gain or loss to the Fund resulting from changes in actuarial
10 assumptions and from experience different from the assumed since the last valuation.

11 The Secretary shall promptly certify the amount of the sum to the Secretary of the
12 Treasury.

13 (B) Upon receiving the certification pursuant to paragraph (1), the Secretary of
14 Treasury shall promptly pay into the Fund from the General Fund of the Treasury the amount so
15 certified. Such payment shall be the contribution to the Fund for the fiscal year.

16 (f) Investment of Assets of the Fund. The Secretary may request the Secretary of the Treasury
17 to invest such portion of the Fund as is not, in the judgment of the Secretary, required to meet the
18 current needs of the Fund. Such investments shall be made by the Secretary of the Treasury in public
19 debt securities with maturities suitable to the needs of the Fund, as determined by the Secretary, and
20 bearing interest at rates determined by the Secretary of the Treasury, taking into consideration current
21 market yields on outstanding marketable obligations of the United States of comparable maturities. The

1 income on such investments shall be credited to and form a part of the Fund.

2 (g)(1) Implementation Year Exceptions. To avoid funding shortfalls in the first year should
3 formal actuarial determinations not be available in time for budget preparation, the amounts used in the
4 first year in section 105(a)(1) shall be set equal to the estimate in section 104(b)(1) if final
5 determinations are not available. The original unfunded liability as defined in section 104(a) shall include
6 an adjustment to correct for this difference between the formal actuarial determinations and the
7 estimates in section 104(b)(1).

8 (2) Exemption from sequestration.--Section 255(g)(1)(B) of the Balanced Budget and
9 Emergency Deficit Control Act of 1985, as amended, (2 U.S.C. 905(g)(1)(B)) is further
10 amended by striking "National Oceanic and Atmospheric Administration retirement (13-1450-
11 0-1-306);", and inserting in lieu there of: the following new item: "National Oceanic and
12 Atmospheric Administration Commissioned Officer Corps Retirement Fund;"

13 (3) Transfer of Appropriations.--Any obligated and unobligated balance of
14 appropriations made to the Department of Commerce that are currently available for benefits
15 payable on account of military retirement and survivor benefit programs to commissioned
16 officers of the NOAA Commissioned Officer Corps and to their survivors, and amounts so
17 transferred shall be part of the assets of the Fund, effective October 1, 2002.

18 (4) Effective date.--Subsection (c)(relating to payments from the Fund) and (e) (relating
19 to payments into the Fund) of this section, shall take effect on October 1, 2002.

20 **Sec. 206. Coast Guard Military Retirement System.**

21 (a) Title 14, United States Code, is amended by inserting after chapter 13, the following new

1 chapter:

2 **"CHAPTER 14-COAST GUARD MILITARY RETIREMENT FUND**

3 "Sec.

4 "561. Establishment and purpose of Fund; definition.

5 "562. Assets of Fund

6 "563. Payments for the Fund.

7 "564. Determinations of contributions to the Fund.

8 "565. Payments into the Fund.

9 "566. Investment of assets of Fund.

10 "567. Implementation year exceptions.

11 "§ 561. Establishment and purpose of Fund; definition

12 "(a) There is established on the books of the Treasury a fund to be known as the Coast Guard
13 Military Retirement Fund (hereinafter in this chapter referred to as the 'Fund'), which shall be
14 administered by the Secretary of the Department of Transportation. The Fund shall be used for the
15 accumulation of funds in order to finance on an actuarially sound basis liabilities of the Coast Guard
16 under military retirement and survivor benefit programs.

17 "(b) In this chapter, 'military retirement and survivor benefit programs' means

18 "(1) the provisions of this title and title 10, United States Code, creating entitlement to,
19 or determining, the amount of retired pay;

20 "(2) the programs providing annuities for survivors of members and former members
21 and former members of the armed forces, including chapter 73 of title 10, section 4 of Public

1 Law 92-425, and section 5 of Public Law 96-402; and

2 "(3) the authority provided in section 1048(h) of title 10.

3 "(c) In this chapter, reference to 'the Secretary' shall mean the Secretary of Transportation
4 when the Coast Guard is not operating as a service in the Navy. When the Coast Guard is operating as
5 a service in the Navy, 'the Secretary' shall refer to the Secretary of Defense.

6 "§ 562. Assets of the Fund

7 "There shall be deposited into the Fund the following, which shall constitute the assets of the
8 Fund:

9 "(1) Amounts paid into the Fund under section 565 of this title.

10 "(2) Any return on investment of the assets of the Fund.

11 "(3) Amounts transferred into the Fund.

12 "§ 563. Payment from the Fund

13 "(a) There shall be paid from the Fund—

14 "(1) retired pay payable to persons on the retired list of the Coast Guard;

15 "(2) retired pay payable under chapter 67 of title 10, to former members of the Coast
16 Guard and the former United States Lighthouse Service;

17 "(3) benefits payable under programs that provide annuities for survivors of members
18 and former members of the armed forces, including chapter 73 of title 10, section 4 of Public
19 Law 92-425, and section 5 of Public Law 96-402; and

20 "(4) amounts payable under section 108(h) of title 10.

21 "(b) The assets of the Fund are hereby made available for payments under subsection (a).

1 "§ 564. Determination of contributions to the Fund

2 "(a) The Secretary shall determine the amount that is the present value (as of October 1, 2001)
3 of future benefits payable from the Fund that are attributable to service in the Coast Guard and the
4 former United States Lighthouse Service performed as of September 30, 2001. That amount is the
5 original unfunded liability of the Fund. The Secretary shall determine by June 30, 2002, an amortization
6 schedule for the liquidation of such liability over the period ending September 30, 2041, with the first
7 payment commencing on September 30, 2002. Contributions to the Fund for the liquidation of the
8 original unfunded liability in accordance with such schedule shall be made as provided in section 565(b)
9 of this title.

10 "(b) The Secretary shall determine each fiscal year, in sufficient time for inclusion in the budget
11 request for the following fiscal year, the total amount of Department of Transportation, or Department
12 of Defense, contributions to be made to the Fund during that fiscal year under section 565(a) of this
13 title. That amount shall be the sum of the following:

14 "(1) the product of –

15 "(A) the current estimate of the value of the single level percentage of basic pay
16 to be determined under subsection (c)(1)(A) at the time of the most recent actuarial
17 valuation under subsection (c); and

18 "(B) the total amount of basic pay expected to be paid during that fiscal year to
19 members of the Coast Guard on active duty (other than active duty for training); and

20 "(2) the product of –

21 "(A) the current estimate of the value of the single level percentage of basic pay

1 and of compensation (paid pursuant to section 206 of title 37, United States Code) to
2 be determined under subsection (c)(1)(B) at the time of the most recent actuarial
3 valuation under subsection (c); and

4 "(B) the total amount of basic pay and compensation (paid pursuant to section
5 206 of title 37) expected to be paid during that fiscal year to members of the Coast
6 Guard Ready Reserve (other than members of full-time Reserve duty other than for
7 training) who are not otherwise described in subparagraph (1)(B).

8 "(c)(1) Not less often than every four years (or prior to the effective date of any statutory
9 change affecting benefits payable on account of retirement, disability, or death to commissioned officers
10 or their survivors), the Secretary shall carry out an actuarial valuation of the Coast Guard military
11 retirement and survivor benefit programs. Each actuarial valuation of such programs shall be signed by
12 an enrolled Actuary and shall include—

13 "(A) a determination (using the aggregate entry-age normal cost method) of a
14 single level percentage of basic pay for members of the Coast Guard on active duty
15 (other than active duty for training); and

16 "(B) a determination (using the aggregate entry-age normal cost method) of a
17 single level percentage of basic pay and of compensation (paid pursuant to section 206
18 of title 37) for members of the Ready Reserve of the Coast Guard (other than members
19 on full-time Reserve duty other than for training) who are not otherwise described in
20 subparagraph (1)(B). Such single level percentages shall be used for the purposes of
21 subsection (b) and section 565 (a) of this title.

1 "(2) If at the time of any such valuation the Secretary determines that, based upon
2 changes in benefits since the last such valuation, there has been an actuarial gain or loss to the
3 Fund, the Secretary shall determine an amortization method and schedule for the amortization
4 of the cumulative gain or loss to the Fund created by such change in benefits and any previous
5 such changes in benefits through a decrease or an increase in the payment that would otherwise
6 be made to the Fund.

7 "(3) If at the time of any such valuation the Secretary determines that, based upon
8 changes in actuarial assumptions and upon experience different from that assumed since the last
9 valuation, there has been an actuarial gain or loss to the Fund, the Secretary shall determine an
10 amortization method and schedule for the amortization of the cumulative gain or loss to the Fund
11 created by such change in actuarial assumptions and any previous such changes in assumptions
12 through an increase or decrease in the payments that would otherwise be made to the Fund.

13 "(4) Contributions to the Fund in accordance with amortization schedules under
14 paragraphs (2) and (3) shall be made as provided in section 565(b) of this title.

15 "(d) All determinations under this section shall be in accordance with generally accepted
16 actuarial principles and practices and, where appropriate, shall follow the general pattern of methods
17 and assumptions approved by the Department of Defense Retirement Board of Actuaries.

18 "(e) The Secretary shall provide for the keeping of such records as are necessary for
19 determining the actuarial status of the Fund.

20 "§ 565. Payments into the Fund

21 "(a) From amounts appropriated to the Coast Guard for salaries and expenses, the Secretary

1 shall pay into the Fund at the end of each month as the Department of Transportation, or Department of
2 Defense, contribution to the Fund for that month the amount that is the sum of the following:

3 "(1) the product of—

4 "(A) the level percentage of basic pay determined using all the methods and
5 assumptions approved for the most recent (as of the first day of the current fiscal year)
6 actuarial valuation under section 564(c)(1)(A) of this title (except that any statutory
7 changes in the military retirement and survivor benefit systems that is effective after the
8 date of that valuation and on or before the first day of the current fiscal year shall be
9 used in such determination); and

10 "(B) the total amount of basic pay accrued for that month by members of the
11 Coast Guard on active duty (other than active duty for training); and

12 "(2) the product of —

13 "(A) the level percentage of basic pay and of compensation (accrued pursuant
14 to section 206 of title 37) determined using all the methods and assumptions approved
15 for the most recent (as of the first day of the current fiscal year) actuarial valuation
16 under section 564(c)(1)(B) of this title (except that any statutory change in the military
17 retirement and survivor benefit systems that is effective after the date of that valuation
18 and on or before the first day of the current fiscal year shall be used in such
19 determination); and

20 "(B) the total amount of basic pay and of compensation (paid pursuant to
21 section 206 of title 37, United States Code) accrued for that month by members of the

1 Ready Reserve (other than members of full-time Reserve duty other than for training)
2 who are not otherwise described in paragraph (1)(B).

3 "(b)(1) At the beginning of each fiscal year the Secretary of the Treasury shall promptly pay into
4 the Fund from the General Fund of the Treasury the amount certified to the Secretary of the Treasury
5 by the Secretary under paragraph (3). Such payment shall be the contribution to the Fund for that fiscal
6 year required by sections 564(a) and 564(c)(2) and (3) of this title.

7 "(2) At the beginning of each fiscal year the Secretary shall determine the sum of the
8 following:

9 "(A) The amount of the payment for that year under the amortization schedule
10 determined under section 564(a) of this title for the amortization of the original unfunded
11 liability of the Fund;

12 "(B) The amount (including any negative amount) for that year under the most
13 recent amortization schedule determined by the Secretary under section 564(c)(2) of
14 this title for the amortization of any cumulative actuarial gain or loss to the Fund,
15 resulting from changes in benefits; and

16 "(C) The amount (including any negative amount) for that year under the most
17 recent amortization schedule determined by the Secretary under section 564(c)(3) of
18 this title for the amortization of any cumulative actuarial gain or loss to the Fund,
19 resulting from changes in actuarial assumptions and from experience different from that
20 assumed since the last valuation.

21 "(3) The Secretary shall promptly certify the amount determined under paragraph (2)

1 each year to the Secretary of the Treasury.

2 "§ 566. Investment of assets of Fund

3 "The Secretary may request the Secretary of the Treasury to invest such portion of the Fund as is not,
4 in the judgment of the Secretary, required to meet the current needs of the Fund. Such investments
5 shall be made by the Secretary of the Treasury in public debt securities with maturities suitable to the
6 needs of the Fund, as determined by the Secretary, and bearing interest at rates determined by the
7 Secretary of the Treasury, taking into consideration current market yields on outstanding marketable
8 obligations of the United States of comparable maturities. The income on such investments shall be
9 credited to and form a part of the Fund."

10 "§ 567. Implementation Year Exceptions

11 "To avoid funding shortfalls in the first year should formal actuarial determinations not be available in
12 time for budget preparation, the amounts used in the first year in sections 565(a)(1)(A) and
13 565(a)(2)(A) shall be set equal to those estimates in sections 564(b)(1)(A) and 564(b)(2)(A) if final
14 determinations are not available. The original unfunded liability as defined in section 564(a) shall include
15 an adjustment to correct for this difference between the formal actuarial determinations and the
16 estimates in sections 564(b)(1)(A) and 254(b)(2)(A).

17 (b) The table of chapters at the beginning of part I, of title 14, as added by section 566, are
18 amended by inserting after the item relating to chapter 13 the following new item:

19 "14. Coast Guard Military Retirement Fund.....561".

20 (c) Section 255(g)(1)(B) of the Balanced Budget and Emergency Deficit Control Act of 1985
21 (2 U.S.C. 905(g)(1)(B)) is amended by striking "Retired Pay, Coast Guard (69-0241-0-1-403)" and

1 inserting "Coast Guard Military Retirement Fund (69-0241-01-403)".

2 (d) There shall be transferred into the Fund on October 1, 2002, any obligated and unobligated
3 balances of appropriations made to the Department of Transportation that are currently available for
4 retired pay, and amounts so transferred shall be part of the assets of the Fund.

5 (e) Sections 563 (relating to payments from the Fund) and 565 (relating to payments into the
6 Fund) of title 14, United States Code, shall take effect on October 1, 2002.

7 **SUBTITLE B - ACCRUAL FUNDING OF POST-RETIREMENT HEALTH BENEFITS**

8 **COSTS FOR FEDERAL EMPLOYEES**

9 **Sec. 211. Federal Employees Health Benefits Fund.**

10 (a) Section 8906 of title 5, United States Code, is amended—

11 (1) by redesignating subsection (c) as paragraph (c)(1) and by adding at the end the
12 following new paragraphs:

13 "(2) In addition to Government contributions required by subsection (b) and paragraph (1),
14 each employing agency shall contribute amounts as determined by the Office to be necessary to prefund
15 the accruing actuarial cost of post-retirement health benefits for each of the agency's current employees
16 who are eligible for Government contributions under this section. Amounts under this paragraph shall
17 be paid by the employing agency separate from other contributions under this section, from the
18 appropriations or fund used for payment of the salary of the employee, on a schedule to be determined
19 by the Office.

20 "(3) Paragraph (2) shall not apply to the United States Postal Service or the Government of the
21 District of Columbia."; and

1 (2) by amending paragraph 1 of subsection (g) to read:

2 (1) Except as provided in paragraphs (2) and (3), all government
3 contributions authorized by this section for health benefits for an annuitant shall be paid
4 from the Employees Health Benefits Fund to the extent that funds are available in
5 accordance with section 8909(j)(6) and, if necessary, from annual appropriations which
6 are authorized to be made for that purpose and which may be made available until
7 expended .".

8 (b) Section 8909 of title 5, United States Code, is amended by adding at the end the following
9 new subsection:

10 (j)(1) Not later than June 30, 2002, the Office shall determine the existing liability of
11 the Fund for post-retirement health benefits, excluding the liability of the United States Postal
12 Service for service under section 8906(g)(2), under this chapter as of September 30, 2001.
13 The Office shall establish an amortization schedule, including a series of annual installments
14 commencing September 30, 2002, which provides for the liquidation of such liability by
15 September 30, 2041.

16 (2) At the close of each fiscal year, for fiscal years beginning after September 30,
17 2001, the Office shall determine the supplemental liability of the Fund for post-retirement health
18 benefits, excluding the liability attributable to the United States Postal Service for service
19 subject to section 8906(g)(2), and shall establish an amortization schedule, including a series of
20 annual installments commencing on September 30 of the subsequent fiscal year, which provides
21 for liquidation of such supplemental liability over 30 years.

1 "(3) Amortization schedules established under this paragraph shall be set in accordance
2 with generally accepted actuarial practices and principles.

3 "(4) At the end of each fiscal year on and after September 30, 2002, the Office shall
4 notify the Secretary of the Treasury of the amounts of the next installments under the most
5 recent amortization schedules established under paragraphs (1) and (2). Before closing the
6 accounts for the fiscal year, the Secretary shall credit the sum of these amounts (including in that
7 sum any negative amount for the amortization of the supplemental liability) to the Fund, as a
8 Government contribution, out of any money in the Treasury of the United States not otherwise
9 appropriated.

10 "(5) For the purpose of carrying out paragraphs (1) and (2), the Office shall perform or
11 arrange for actuarial determinations and valuations and shall prescribe retention of such records
12 as it considers necessary for making periodic actuarial valuations of the Fund.

13 "(6) Notwithstanding subsection (b), the amounts deposited into the Fund pursuant to
14 this subsection and section 8906(c)(2) to prefund post-retirement health benefits costs shall be
15 segregated within the Fund so that such amounts, as well as earnings and proceeds under
16 paragraph (c) attributable to them, may be used exclusively for the purpose of paying
17 Government contributions for post-retirement health benefits costs. When such amounts are
18 used in combination with amounts withheld from annuitants to pay for health benefits, a portion
19 of the contributions shall then be set aside in the Fund as described in paragraph (b)."

20 "(7) Under this subsection, 'supplemental liability' means:

21 (A) the actuarial present value for future post-retirement health benefits that are

1 the liability of the Fund, less

2 (B) the sum of:

3 (i) the actuarial present value of all future contributions by agencies and
4 annuitants to the Fund toward those benefits pursuant to section 8906;

5 (ii) the present value of all scheduled amortization payments to the Fund
6 pursuant to paragraphs (1) and (2);

7 (iii) the Fund balance as of the date the supplemental liability is
8 determined, to the extent that such balance is attributable to post-retirement
9 benefits; and

10 (iv) any other appropriate amount, as determined by the Office in
11 accordance with generally accepted actuarial practices and principles.

12 **Sec. 212. Uniformed Services Health Benefits for Retirees.**

13 (a) Section 1111 of title 10, United States Code, is amended—

14 (1) in subsection (a)—

15 (A) by striking "Medicare-Eligible"; and

16 (B) by striking "for medicare eligible beneficiaries" and inserting "including care
17 provided in military treatment facilities";

18 (2) in subsection (b)(1), by striking "for medicare eligible beneficiaries", "medicare
19 eligible" and "medicare- eligible";

20 (3) by striking subsection (b)(2);

21 (4) by redesignating subsection (b)(3) as (b)(2);

1 (b) Section 1113(a) of such title 10 is amended by striking "for medicare-eligible beneficiaries"
2 and inserting "including care provided in military treatment facilities";

3 (c) Section 1114(a)(1) of such title 10 is amended by striking "medicare-eligible";

4 (d) Section 1116 of such title 10 is amended—

5 (1) in subsection (a), by inserting before the colon ", less the amount in paragraph (c)";

6 (2) in subsection (a)(1)(B), by adding at the end the following new paragraph:

7 "The amount paid into the Fund under this subsection shall be paid from the funds
8 available for the military personnel accounts";

9 (3) in subsection (a)(2)(B), by striking "Defense Health Program" and inserting "military
10 personnel accounts"; and

11 (4) by adding at the end the following new subsection (c):

12 "The Secretaries of Health and Human Services, Commerce, and Transportation shall
13 pay into the Fund each month, from amounts available for salaries and expenses, the portion of
14 the amounts determined by the Secretary of Defense under (a)(1) and (a)(2) which are
15 attributable to service performed, respectively, by the uniformed services of the Coast Guard,
16 the Commissioned Officer Corps of the Public Health Service, and the Commissioned Officer
17 Corps of the National Oceanic and Atmospheric Administration."

18 (5) by adding at the end the following new subsection (d):

19 "To avoid funding differences in the first year should formal actuarial determinations not
20 be available in time for budget preparation, the monthly dollar amounts used in the first year
21 sections 1116(a)(1)(A) and 1116(a)(2)(A) shall be set equal to those estimates in section

1 1115(b)(1)(A)(i) and 1115(b)(1)(B)(i) if formal actuarial determinations are not available. The
2 original unfunded liability as defined in 1115(a) shall include an adjustment to correct for the
3 difference between the formal actuarial determinations and the estimates in section 1115(b)(1)."

4 (e) Conforming Amendment.—The heading for chapter 56 of title 10, United States Code, is
5 amended to read as follows:

6 "CHAPTER 56—UNIFORMED SERVICES RETIREE HEALTH CARE FUND".

7 **Sec 213. Effective date.**

8 Except as otherwise provided herein, this Title shall take effect upon enactment with respect to fiscal
9 years beginning after 2002.

10 **TITLE III - FEDERAL PROPERTY ASSET MANAGEMENT REFORMS**

11 **Sec. 301. Definitions.**

12 Section 3 of the Federal Property and Administrative Services Act of 1949 (hereinafter in this Title
13 referred to as the 'Act'), as amended (40 U.S.C. Sec 472), is amended by adding at the end the
14 following:

15 "(m) The term 'landholding agency' means any Federal agency that, by specific or general
16 statutory authority, has jurisdiction, custody, and control over real property, or interests therein. The
17 term does not include agencies when they are disposing of real property for public benefit purposes
18 pursuant to section 203 of the Act (40 U.S.C. Sec 484), and does not apply to Indian lands - i.e.,
19 lands held in trust or restricted fee status for individual Indians or Indian Tribes.

20 **SUBTITLE A - LIFE CYCLE PLANNING AND MANAGEMENT**

21 Title II of the Act, as amended, is amended by adding at the end thereof the following new sections:

1 "Sec. 213. (a) Asset Management Principles. In accordance with the authorities vested in the
2 Administrator under section 205(c) of this Act, the Administrator, in collaboration with the heads of
3 Federal agencies and the Office of Management and Budget, shall establish and maintain current asset
4 management principles to be applied where appropriate to real and personal property assets subject to
5 this Act and under the jurisdiction, custody and control of such agencies. With respect to the outlease
6 of Federal Property through the use of public-private partnerships authorized in section 216(d), the
7 Administrator shall require the use of the following principles: (1) under no circumstances shall the
8 liability of the government arising from an arrangement with a non-governmental entity or from the
9 operation of any partnership, cooperative venture, limited liability company, corporation, trust, or other
10 business arrangement created as the result of an agreement with a non-governmental entity exceed the
11 amount of the Federal government's capital contribution or equity contribution; (2) such projects will
12 only be undertaken if the federal asset is not developed to its highest and best use and the project is
13 economically viable; determination of economic viability would include, among other relevant economic
14 factors , the internal rate of return of the investment to the government (with preference given to higher
15 rates of return) at leaseback rates not exceeding market rates; and (3) projects will only be undertaken
16 if the market conditions are favorable to development and 'full occupancy' by government or private
17 tenants.

18 "(b) Performance Measurement Benchmarks. The Administrator, in consultation with the heads
19 of landholding agencies, shall establish performance measures to determine the effectiveness of Federal
20 real property management. These measures shall monitor and assess: (1) the disposal of non-
21 performing real property assets; (2) the reduction in vacant Federal space; (3) the realization of equity

1 value in Federal real property assets; (4) the value added through cooperative arrangements with the
2 commercial real estate community; and (5) the enhancement of Federal agency productivity through an
3 improved working environment. The performance measures shall be designed to: (1) enable the
4 Congress and heads of agencies to track progress in the achievement of property management
5 objectives on a government wide basis; and (2) allow for comparing the performance of agencies
6 against industry and other public sector agencies in terms of performance. In developing and
7 implementing the performance measures, the Administrator shall use existing data sources and
8 automated data collection tools to the maximum extent practical.

9 "(c) Inventory Database. In order to accumulate and maintain a single, comprehensive
10 descriptive listing of all Federal real property interests under the custody and control of each Federal
11 agency, the Administrator, in coordination with the heads of Federal agencies, shall collect such
12 descriptive information, except for classified information, as the Administrator deems will best describe
13 the nature, use, and extent of the real property holdings of the United States. For purposes of this
14 section, real property holdings include all public lands of the United States and all real property of the
15 United States located outside the States of the Union, to include, but not be limited to the District of
16 Columbia, Puerto Rico, American Samoa, Guam, the Trust Territory of the Pacific Islands and the
17 Virgin Islands. To facilitate the reporting on a uniform basis, the Administrator is authorized to establish
18 data and other information technology standards for use by Federal agencies in developing or upgrading
19 agency real property information systems.

20 "(d) Public Information Access. The listing compiled pursuant to this section shall be public
21 record; however, the Administrator is authorized to withhold information, including the location of

1 classified facilities, when it is determined that withholding such information would be in the public
2 interest. Nothing herein shall require the public release of information that is exempt from disclosure
3 pursuant to the Freedom of Information Act, as amended (5 U.S.C. §552).

4 "(e) Jurisdiction of Administrator. Except for the purpose of maintaining the property listing
5 described in subparagraphs (c) and (d), above, nothing in this section shall authorize the Administrator
6 to assume jurisdiction over the acquisition, management, or disposal of real property not subject to this
7 Act.

8 "Sec. 214. (a) Within 180 days of the effective date of this section, the head of each
9 landholding agency shall appoint, or designate from among senior management officials within such
10 agency, a Senior Real Property Officer. Such individual shall be selected with special attention to the
11 qualifications required to administer the functions described under this section. The head of any
12 landholding agency who so desires may also appoint a Real Property Officer for any major component
13 part of an agency, and such Real Property Officers, for the purposes of complying with this title, shall
14 report to the Senior Real Property Officer.

15 "(b) The Senior Real Property Officer for each agency shall be responsible for continuously
16 monitoring agency real property assets to:

17 "(1) manage each asset, including but not limited to its functional use, occupancy,
18 reinvestment requirements and future utility, in a manner fully consistent with and supportive of
19 the goals and objectives set forth in the agency's Strategic Plan required under section 3 of the
20 Government Performance and Results Act of 1993, Public Law 103-62 (5 U.S.C. §306),
21 consistent with the framework provided by the real property asset management principles

1 published by the Administrator pursuant to section 213(a), and reflected in an agency asset
2 management plan. The asset management plan shall be prepared according to guidelines issued
3 by the Administrator, shall be maintained to reflect current agency program and budget
4 priorities, and be consistent with capital planning and programming guidance issued by the
5 Office of Management and Budget;

6 "(2) identify real property assets that can benefit from the application of the enhanced
7 asset management tools described in section 216;

8 "(3) apply enhanced asset management tools, in those cases where a real property asset
9 can so benefit, in such a way that any resulting transaction will result in a fair return on the
10 Federal government investment and protect the Federal government from unreasonable financial
11 or other risks; and

12 "(4) provide to the Administrator a listing and description of the real property assets,
13 under the jurisdiction, custody and control of that agency, including public lands of the United
14 States and property located in foreign lands, along with any other relevant information the
15 Administrator may request, for inclusion in a government-wide listing of all Federal real
16 property interests established and maintained in accordance with section 213(c) of this Title.

17 "(5) determine the performance of the agency against the performance measures
18 established under section 213(b) and report the results of such monitoring to the Congress in
19 the agency's budget submission under section 1005 of title 31, United States Code.

20 "(c) Except as otherwise provided by Federal law, prior to a Federal agency acquiring any
21 interests in real property from any non-Federal source, the Senior Real Property Officer of the

1 acquiring agency shall give first consideration to available Federal real property holdings."

2 **SUBTITLE B - ENHANCED AUTHORITIES FOR REAL PROPERTY**

3 **ASSET MANAGEMENT**

4 **Sec. 311. Enhanced asset management tools.**

5 Title II of the Act, as amended, is amended by adding at the end thereof the following new
6 sections:

7 "Sec. 215. Criteria for Using Enhanced Asset Management Tools --

8 "(a) Subject to the requirements of subsection (b) of this section, the head of a landholding
9 agency may apply an enhanced asset management tool described in section 216 to a real property
10 interest under the agency's jurisdiction, custody and control when the head of the agency has
11 determined that such real property interest --

12 "(1) when used to acquire replacement real property, is not excess property within the
13 meaning given in subsection 3(e) of this Act (40 U.S.C. §472(e)); provided, further, the agency
14 shall include as part of the documentation required under subsection (b)(3) a description of the
15 need and mission requirement fulfilled by the Federal property;

16 "(2) is used to fulfill or support a continuing mission requirement of the agency; and

17 "(3) can, by applying an enhanced asset management tool, improve the support of such
18 mission.

19 "(b) Before applying an enhanced asset management tool defined in section 216 to a real
20 property interest identified under subsection (a) of this section, the head of the agency shall determine
21 that such application meets all of the following criteria:

1 "(1) supports the goals and objectives set forth in the agency's Strategic Plan required
2 under section 3 of the Government Performance and Results Act of 1993, Public Law 103-62
3 (5 U.S.C. §306) and the agency's real property asset management plan as required in section
4 214;

5 "(2) use of the real property is economical, cost effective, and in the best interests of the
6 United States; and

7 "(3) is documented in a business plan which, commensurate with the nature of the
8 selected tool, analyzes all reasonable options for using the property; takes into account
9 applicable provisions of law including but not limited to the National Environmental Policy Act
10 of 1969, as amended; and evidences compliance with the requirements of the McKinney-Vento
11 Homeless Assistance Act, including (i) describing the result of the determination by the
12 Department of Housing and Urban Development of the suitability of the property for use to
13 assist the homeless; and (ii) explaining the rationale for the landholding agency's decision not to
14 make the property available for use to assist the homeless.

15 "Sec. 216. Enhanced Asset Management Tools --

16 "(a) Interagency Transfers or Exchanges -- Any landholding agency may acquire replacement
17 real property by transfer or exchange of real property subject to this Act with other Federal agencies
18 under terms mutually agreeable to the agencies involved.

19 "(b) Sales to or Exchanges with Non-Federal Sources -- Any landholding agency may acquire
20 replacement real property by selling or exchanging a real property asset or interests therein with any
21 non-Federal source; provided that: (1) this transaction does not conflict with other applicable laws

1 governing the acquisition of interests in real property by Federal agencies; (2) the agency first made the
2 property available for transfer or exchange to other Federal agencies; and (3) the transaction results in
3 the agency receiving fair market value consideration, as determined by the agency head, which
4 consideration may be future consideration, for the asset sold or exchanged.

5 "(c) Subleases -- The head of any landholding agency, by lease, permit, license or similar
6 instrument, may make available to other Federal agencies and to non-Federal entities the unexpired
7 portion of any government lease for real property; provided that the term of any sublease shall not
8 exceed the unexpired portion of the term of the original government lease of the property and the
9 sublease results in the agency receiving fair market rental value for the asset. Prior to subleasing to any
10 private person or private sector entity, the Federal agency shall give consideration to the needs of the
11 following entities with the needs of entities listed in paragraph (1) being considered before the needs of
12 entities listed in paragraph (2):

13 "(1) FIRST PRIORITY--The needs of each of the following entities, equally, shall be
14 given first priority by the agency:

15 "(A) Federal agencies; and

16 "(B) Indian tribes (as defined by section 4 of the Indian Health Care
17 Improvement Act (25 U.S.C. § 1603)), urban Indian organizations (as defined by that
18 section), and tribal organizations (as defined by section 4 of the Indian Self-
19 Determination and Education Assistance Act (25 U.S.C. 450b)), through the
20 Secretaries of the Department of the Interior and the Department of Health and Human
21 Services, when the property is to be used in connection with an Indian self-

1 determination contract or grant pursuant to the Indian Self-Determination Act (25
2 U.S.C. 450f et seq.).

3 "(2) SECOND PRIORITY--The needs of each of the following entities, equally, shall
4 be given second priority by the agency:

5 "(A) State and local governments; and

6 "(B) Indian tribes, tribal organizations, and urban Indian organizations (defined
7 as in paragraph (1)(B)), through the Secretaries of the Department of the Interior and
8 the Department of Health and Human Services when the property is to be used for
9 purposes other than as described in paragraph (1) and such uses of the property are
10 authorized by law other than this subsection.

11 "(d) Outleases -- The head of any landholding agency may make available by outlease
12 agreements with other Federal agencies and non-Federal entities any unused or underused portion of or
13 interest in any agency real and related personal property after finding that (i) there is no long-term
14 mission requirement for the property, but the Federal government is not permitted to dispose of it; or
15 (ii) there is a continuing long-term mission requirement for the property to remain in Government
16 ownership, and (iii) the use of the real property by the lessee will not be inconsistent with the statutory
17 mission of the landholding agency; provided that such an outlease transaction to a non-Federal entity is
18 conducted competitively.

19 "(1) Outlease Agreements -- In order to reduce vacant space and realize the equity
20 value of Government-owned real property assets, provide Federal agencies with modern
21 functional work environments, and work cooperatively with the commercial real estate

1 community, any outlease agreements authorized under this subsection:

2 "(A) may be a partnership, cooperative venture, limited liability company,
3 corporation, trust, sole proprietorship, or other business arrangement;

4 "(B) shall be for a term no longer than 50 years;

5 "(C) shall result in the agency receiving fair market value consideration, as
6 defined by the agency head, for the asset, including cash, other property (either real or
7 personal), services, and/or in-kind or future consideration;

8 "(D) may provide a leaseback option to the Federal government to occupy
9 space in any facilities acquired, constructed, repaired, renovated, or rehabilitated by the
10 non-governmental entity, provided that the agreement does not guarantee government
11 occupancy; provided further that any subsequent agreements to leaseback space in
12 such facilities must be in accordance with the competition requirements of Title III of
13 this Act (41 U.S.C. §253 et seq.);

14 "(E) shall provide (i) that neither the United States, nor its agencies or
15 employees, shall be liable for any actions, debts or liability of the lessee, and (ii) that the
16 lessee shall not be authorized to execute and shall not execute any instrument or
17 document creating or evidencing any indebtedness unless such instrument or document
18 specifically disclaims any liability of the United States, and of any Federal agency or
19 employee thereunder in excess of the Government's capital contribution in the lessee;

20 "(F) shall provide (i) that the Government's interest under the agreement is
21 senior to that of any lender to a non-government entity, and (ii) that under no

1 circumstances shall the liability of the United States arising from its arrangement with the
2 non-governmental entity or from the operations of any partnership, cooperative venture,
3 limited liability company, corporation, trust, or other business arrangement created as
4 the result of the agreement with a non-governmental entity exceed the amount of the
5 Federal government's capital contribution or equity contribution to the partnership,
6 cooperative venture, limited liability company, corporation, trust, or other business
7 arrangement; and

8 "(G) may contain such other terms and conditions as the head of the agency
9 making the property available deems necessary to protect the interests of the Federal
10 government.

11 "(2) Order of Consideration -- In making property available for outlease, the
12 landholding agency shall follow the order of consideration listed in subsection (c) of this section.

13 "(3) Prerequisites to Agreements -- Prior to the head of any landholding agency
14 executing any agreement authorized under subsection (d) of this section that would result in the
15 development or substantial rehabilitation or renovation of Federal assets in a business
16 arrangement with a non-Federal entity, the head of such agency shall undertake an analysis of
17 the proposed arrangement or transaction to determine the business and legal risks and benefits
18 to the Federal Government that would likely result from the proposed arrangement or
19 transaction.

20 "(4) Scoring – For the sole purpose of scoring lease-back agreements, if the non-
21 Federal entity shall exercise management control of the business of the public-private entity and

1 holds a majority interest in ownership in the public-private venture; then the project shall not be
2 considered to be constructed on government-owned land for purposes of the application of
3 scoring rules. All leaseback agreements must meet the requirements of an operating lease as
4 specified in relevant OMB Circulars.

5 "(5) Authority for Disposition of Leased Property - If, during the term of an outlease
6 involving the development or substantial rehabilitation/renovation of a Federal asset in a
7 business arrangement with a non-Federal entity, the head of the agency determines that the
8 property is no longer needed by the agency, the head of the agency may initiate action for the
9 transfer to the lessee of all right, title, and interest of the United States in the property by
10 requesting the Administrator of General Services to dispose of the property. A disposition
11 under this section may be made for such consideration as the head of the agency and the
12 Administrator jointly determine is in the best interests of the United States and upon such other
13 terms and conditions as the head of the agency and the Administrator consider appropriate.

14 "(6) Other Authorities -- The authority under this subsection shall not be construed to
15 affect any other authority of any agency to outlease property or to otherwise make property
16 available for any reason.

17 "(7) Sunset Provision -- The authority to enter into new outlease agreements under
18 subsection 216(d) expires 10 years after the date of enactment. The effectiveness of the use of
19 such authority shall be reviewed biennially by the General Accounting Office.

20 "Sec. 217. Forms of Consideration -- Notwithstanding any other provision of law, the forms of
21 consideration received from an enhanced asset management tool as described in section 216 may

1 include cash or cash equivalents, other property (either real or personal), in-kind assets, services, future
2 consideration, or any combination thereof.

3 "Sec. 218. Transactional Reports -- For those transactions authorized under section 216
4 involving the sale, exchange or outlease to a non-Federal source of any asset valued in excess of \$2
5 million at the time of the transaction, the head of the landholding agency performing the transaction shall
6 submit the business plan required by subsection 215(b)(3) to the Office of Management and Budget
7 and to the appropriate Committees of the United States Senate and the House of Representatives at
8 least 30 calendar days prior to final execution of such transaction. The \$2 million reporting threshold in
9 this subsection may be adjusted upward or downward by the Administrator to reflect the annual
10 inflation/deflation factor as determined by the Department of Commerce Consumer Price Index.

11 **Sec. 312. Repeal of section 321 of the Federal Property and Administration Services Act.**

12 Section 321 of the Act of June 30, 1932, 47 Stat. 412 (40 U.S.C. §303b), is repealed.

13 **Sec. 313. Disposal of surplus property.**

14 Subsection 203(b) of the Act, as amended (40 U.S.C. §484(b)), is amended to read as
15 follows:

16 "(b)(1) The care and handling of surplus property, pending its disposition, and the disposal of
17 such property, may be performed by the General Services Administration or, when so determined by
18 the Administrator, by the executive agency in possession thereof or by any other executive agency
19 consenting thereto.

20 "(2) Upon the written request of a landholding agency, the Administrator shall delegate
21 all responsibilities and authorities for the care and handling of surplus real and related personal

1 property, pending its disposition, and for the disposal of such property, provided to the
2 Administrator elsewhere in this Act, to the head of the landholding agency. The Administrator
3 of General Services retains the authority to promulgate general policies and procedures for
4 disposing of such property. These policies and procedures shall require that the General
5 Services Administration:

6 "(A) notify the agencies responsible elsewhere in this Act for sponsoring public
7 benefit conveyances of the availability of excess property as soon as it has been
8 declared excess and solicit their input on whether their public benefit represents the
9 highest and best use of such property;

10 "(B) serve as the central point of contact for agencies, prospective donees, and
11 the public on the availability of surplus property as soon as it has been declared surplus;

12 "(C) assure that the agencies with the authority to make disposal decisions give
13 full consideration to the public benefit uses of surplus Federal property in making their
14 disposal decisions; and

15 "(D) serve as a clearinghouse for information on all phases of the surplus
16 property disposal process, including appeals from sponsoring agencies and prospective
17 donees that insufficient consideration was given to public benefit donations.

18 **SUBTITLE C - INCENTIVES FOR REAL AND PERSONAL PROPERTY**

19 **MANAGEMENT IMPROVEMENT**

20 **Sec. 321. Proceeds from transfer or disposition of property.**

21 Section 204 of the Act, as amended (40U.S.C.§485), is amended as follows:

1 (a) in paragraph (2) of subsection (h) by striking "(b)" and inserting in lieu thereof "(c)", and by
2 striking the phrase", to the extent provided in appropriations Acts,";

3 (b) by revising subsection (i) to read as follows:

4 "Federal agencies may retain from the proceeds of the sale of personal property
5 amounts necessary to recover, to the extent practicable, the full costs, direct and indirect,
6 incurred by the agencies in disposing of such property, including but not limited to the costs for
7 warehousing, storage, environmental services, advertising, appraisal, and transportation. Such
8 amounts shall be deposited into an account available for such expenses without regard to fiscal
9 year limitations. Amounts that are not needed to pay such costs shall be transferred at least
10 annually to the general fund or to a specific account in the Treasury as required by statute.";

11 (c) by redesignating subsections (c), (d), (e), (f), (g), (h), and (i), as subsections (d), (e), (f),
12 (g), (h), (i), and (j), respectively; and

13 (d) by striking subsections (a) and (b) and by inserting in lieu thereof the following subsections
14 (a), (b), and (c):

15 Sec. 204. Proceeds from transfer or disposition of property --

16 "(a)(1) Agency retention of proceeds from real property -- Proceeds resulting from the
17 transfer or disposition of real and related property under this Title shall be credited to the fund,
18 account (including the capital asset account provided in subsection (b) of this section) or
19 appropriation of the agency which made the property available and shall be treated as
20 provided in subsections (b) and (c) of this section.

21 "(2) Proceeds from personal property -- Proceeds from any transfer of excess personal

1 property to a Federal agency or from any sale, lease, or other disposition of surplus personal
2 property shall be treated as prescribed in subsection (j) or as otherwise authorized by law.

3 "(3) Other proceeds -- All proceeds under this Title not deposited or credited to a
4 specific agency account, shall be covered into the Treasury as miscellaneous receipts except as
5 provided in subsections (d), (e), (f), (g), (h), (i), and (j) of this section or as otherwise
6 authorized by law.

7 "(b) Monetary Proceeds to agency capital asset accounts -- Monetary proceeds received by
8 agencies from the transfer or disposition of real and related personal property shall be credited to an
9 existing account or an account to be established in the Treasury to pay for the capital expenditures of
10 the particular agency making the property available, which account shall be known as the agency's
11 capital asset account. Subject to subsection (c), any amounts credited or deposited to such account
12 under this section, along with such other amounts as may be appropriated or credited from time to time
13 in annual appropriations acts, shall be devoted to the sole purpose of funding that agency's capital asset
14 expenditures, including any expenses necessary and incident to the agency's real property capital
15 acquisitions, improvements, and dispositions, and such funds shall remain available until expended, in
16 accordance with the agency's asset management plan as required in Section 214 of the Act as amended
17 by this Title, without further authorization: Provided, that: (1) monies from an exchange or sale of real
18 property, or a portion of a real property holding, under subsection 216(b) of the Act as amended by
19 this Title shall be applied only to the replacement of that property or to the rehabilitation of the portion
20 of that real property holding that remains in Federal ownership, and (2) the head of each landholding
21 agency shall include with the materials the agency annually submits under section 1105 of title 31,

1 United States Code, a detailed accounting of all real property transactions carried out under Title II of
2 the Act and of receipts and disbursements from the agency's capital asset account during the previous
3 fiscal year."

4 "(c) Transactional and other costs -- Federal agencies may be reimbursed from the monetary
5 proceeds of real property dispositions or from other available resources, including from the agency's
6 capital asset account, the full costs, direct and indirect, to the agency of disposing of such property,
7 including but not limited to the costs of site remediation, restoration or other environmental services,
8 relocating affected tenants and occupants, advertising and marketing, community outreach, surveying,
9 appraisal, brokerage, historic preservation services, title insurance, due diligence, document notarization
10 and recording services and the costs of managing leases and providing necessary services to the
11 lessees."

12 **Sec. 322. Relationship to other agencies' authorities to use disposal procedures.**

13 Nothing in this Title shall be construed to repeal or supersede any other provision of Federal law
14 directing the use of proceeds from specific real property transactions or directing how or where a
15 particular Federal agency is to deposit, credit or use the proceeds from the sale, exchange or other
16 disposition of Federal property except as expressly provided for herein.

17 **Sec. 323. Impact on other authorities to use disposal proceeds.**

18 (a) Section 2(a) of the Land and Water Conservation Act of 1965, as amended (16 U.S.C.
19 §4601-5(a)), is superseded only to the extent that the Federal Property and Administrative Services Act
20 of 1949, as amended, or a provision of this Title, provide for an alternative disposition of the proceeds
21 from the disposal of any surplus real property and related personal property subject to this Act, or the

1 disposal of any interest therein.

2 (b) Subsection 3302(b) of title 31, United States Code, is superseded only to the extent that
3 this Act or any other Act provides for the disposition of money received by the Government.

4 **Sec. 324. Using share of sale proceeds to maintain historic Treasury receipts.**

5 For purposes of implementing subtitle C of this Title, the following shall apply:

6 (a) For fiscal years 2002 through 2006, OMB shall allocate by agency a pro rata share of the
7 baseline estimate of total surplus real property sales receipts transferred to the Land and Water
8 Conservation Fund that were contained in the President's Budget for Fiscal year 2002, made pursuant
9 to section 1109 of title 31, United States Code. OMB shall notify the affected agencies and
10 Appropriations Committees of the U.S. House of Representatives and Senate in writing of this
11 allocation within 30 days of enactment of this Title and shall not subsequently revise the allocation.

12 (b) On September 30 of each fiscal year, each agency shall transfer to the Treasury an amount
13 equal to its allocation for that fiscal year, out of the proceeds realized from any sales of the agency's
14 surplus real property assets during that fiscal year.

15 (c) If an agency's actual sale proceeds in any fiscal year are less than the amount allocated to it
16 by OMB for that fiscal year, the agency shall transfer all of its sale proceeds to the Treasury, and its
17 allocation for the subsequent fiscal year shall be increased by the difference.

18 (d) On September 30, 2006, if an agency has transferred less sale proceeds to the Treasury
19 than its total allocation for the five years, the agency shall transfer the difference out of any other funds
20 available to the agency.

21 **SUBTITLE D - STREAMLINED AND ENHANCED DISPOSAL AUTHORITIES**

1 **Sec. 331. Including nonprofit organizations as eligible donees.**

2 (a) Section 203 of the Act, as amended (40U.S.C. §484), is amended in paragraph (k)(3) as
3 follows --

4 (1) by striking "or municipality" and inserting in lieu thereof "municipality, or qualified
5 nonprofit organization established for the primary purpose of preserving historic monuments";
6 and

7 (2) by inserting after the first sentence "Such property may be conveyed to a nonprofit
8 organization only if the State, political subdivision, instrumentalities thereof, and municipality in
9 which the property is located do not request conveyance under this section within thirty days
10 after notice to them of the proposed conveyance by the Administrator to that nonprofit
11 organization.".

12 (b) Section 203 of the Federal Property and Administrative Services Act of 1949, as amended
13 (40 U.S.C.§484), is amended by revising paragraph (k)(4)(C) to read as follows --

14 "(C) the Secretary of the Interior, in the case of property transferred pursuant to the
15 Surplus Property Act of 1944, as amended, and pursuant to this Act, to States, political
16 subdivisions, and instrumentalities thereof, and municipalities for use as a public park or public
17 recreation area, and to State, political subdivisions, and instrumentalities thereof, municipalities,
18 and nonprofit organizations for use as an historic monument for the benefit of the public; or".

19 **Sec. 332. Elimination of certain negotiated sale requirements.**

20 (a) Section 203 of the Act, as amended (40 U.S.C. §484), is amended in subsection (e) as
21 follows --

1 (1) by striking subparagraphs (3)(A), (3)(B), (3)(C), and (3)(E);

2 (2) by redesignating subparagraph (3)(D) and subparagraphs (3)(F) through (3)(I), as
3 subparagraphs (3)(A) through (3)(E), respectively;

4 (3) by amending redesignated subparagraph (3)(E) to read as follows:

5 "(E) otherwise authorized by this Act or other law or with respect to personal
6 property deemed advantageous to the Government."; and

7 (4) by amending subparagraph (6)(A) to read as follows:

8 "(6)(A) An explanatory statement shall be prepared of the circumstances of
9 each disposal by negotiation of any real property that has an estimated fair market value
10 in excess of the threshold value for which transactional reports are required under
11 Section 218."; and

12 (5) by deleting subparagraphs (6)(C) and (6)(D).

13 (b) Section 203 of the Federal Property and Administrative Services Act of 1949, as amended,
14 is further amended by adding to the end thereof the following new subsection:

15 "(s) The authority of any department, agency, or instrumentality of the executive branch
16 or wholly-owned Government corporation to convey surplus real and related personal property
17 for public airport purposes under Subchapter II of title 49, United States Code, shall be subject
18 to the requirements of this Act, and any surplus real property available for conveyance under
19 that subchapter shall first be made available to the Administrator for disposal under this section,
20 including conveyance for any public benefit purposes, including public airport use, as the
21 Administrator, after consultation with the affected agencies, deems advisable."

1 **Sec. 333. Exchange and sale of personal property.**

2 Subsection 201(c) of the Act, as amended (40 U.S.C. §481(c)), is revised to read as follows:

3 "(c) In acquiring personal property or related services, or a combination thereof, any executive
4 agency, under regulations to be prescribed by the Administrator, subject to regulations prescribed by
5 the Administrator for Federal Procurement Policy pursuant to the Office of Federal Procurement Policy
6 Act (41 U.S.C. §401 et seq.), may exchange or sell personal property and may apply the exchange
7 allowance or proceeds of sale in such cases in whole or in part payment for similar property or related
8 services, or a combination thereof, acquired: Provided, that any transaction carried out under the
9 authority of this subsection shall be evidenced in writing. Sales of property pursuant to this subsection
10 shall be governed by subsection 203(e) of this title, and shall be exempted from the provisions of
11 section 5 of title 41, United States Code."

12 **Sec. 334. Expansion of abandonment authority.**

13 Subsection 202(h) of the Act, as amended (40 U.S.C. §483(h)), is amended to read as follows:

14 (h) The Administrator may authorize the abandonment, destruction, or other disposal of
15 property which has no commercial value or of which the estimated cost of continued care and handling
16 would exceed the estimated fair market value."

17 **Sec. 335. Clarifying certain donation authorities.**

18 Subsection 203(j) of the Act, as amended (40 U.S.C. § 484(j)), is further amended as follows:

19 (a) Paragraph (j)(1) is amended --

20 (1) by striking the phrase "the fair and equitable distribution, through donation," and
21 inserting in lieu thereof "donation on a fair and equitable basis"; and

1 (2) by striking "paragraphs (2) and (3)" and inserting in lieu thereof "paragraph(2)".

2 (b) Paragraph (j)(2) is deleted.

3 (c) Paragraph (j)(3) is renumbered (j)(2) and amended as follows:

4 (1) by deleting the introductory paragraph and inserting in lieu thereof the following:

5 "(2) The Administrator shall, pursuant to criteria that are based on need and
6 utilization and established after such consultation with State agencies as is feasible,
7 allocate surplus personal property among the States on a fair and equitable basis, taking
8 into account the condition of the property as well as the original acquisition cost thereof,
9 and transfer to the State agency property selected by it for purposes of donation within
10 the State--";

11 (2) in subparagraph (B) by --

12 (A) deleting "providers of assistance to homeless individuals, providers of
13 assistance to families or individuals whose annual incomes are below the poverty line
14 (as that term is defined in section 673 of the Community Services Block Grant Act),";

15 (B) striking out "schools for the mentally retarded, schools for the physically
16 handicapped" and by inserting in lieu thereof "schools for persons with mental or
17 physical disabilities";

18 (C) striking the word "and" before "libraries"; and

19 (D) inserting "and educational activities identified by the Secretary of Defense
20 as being of special interest to the Armed Services," following the word "region,"; and

21 (3) by adding a new subparagraph (C) to read as follows:

1 "(C) to nonprofit institutions or organizations that are exempt from taxation
2 under section 501 of title 26, United States Code, and which have for their primary
3 function the provision of food, shelter, or other necessities to homeless individuals or
4 families or individuals whose annual income is below the poverty line (as that term is
5 defined in section 673 of the Community Services Block Grant Act) for use in assisting
6 the poor and homeless."

7 (d) Paragraph (j)(4) is renumbered (j)(3).

8 (e) Paragraph (j)(5) is renumbered (j)(4).

9 **Sec. 336. Streamlining consideration of surplus real property for homeless assistance.**

10 (a) Section 501 of the McKinney-Vento Homeless Assistance Act, as amended (42 U.S.C.
11 §11411) is amended as follows:

12 (1) in the first sentence of subsection (a), by inserting before the period the
13 following: ", and that have not been previously reported on by an agency under this subsection";

14 (2) in the second sentence of subsection (a), by inserting after "to the Secretary" the
15 following: ", which shall not include information previously reported on by an agency under this
16 subsection";

17 (3) in subsection (b)(1), (c)(1)(A), and (c)(2)(A), by striking "45" and inserting "30";

18 (4) in subsection (c)(1)(A)(i), by inserting after "(a)" the following: "that have not been
19 previously published";

20 (5) in subsection (c)(1)(A)(ii), by inserting after "properties" the following: "that have
21 not been previously published";

1 (6) by striking subsections (c)(1)(D) and (c)(4);

2 (7) in subsection (c)(2)(B), by inserting at the end the following new sentence:

3 "Such efforts as are necessary to provide for the widest possible dissemination of the
4 information on such list shall include publishing the information on an Internet website
5 maintained by the Secretary and providing notice of the information on such list to the local
6 Continuum of Care organization for homeless assistance within the jurisdiction in which the
7 property is located, or if there is no such organization, then to the State.";

8 (8) in subsections (d)(1) and (d)(2), by striking "60" and inserting "90";

9 (9) in subsection (d)(4)(A), by amending to read as follows: "(4)(A) Written notice of
10 intent to apply for a property published under subsection (c)(1)(A)(ii) of this section may be
11 filed at any time after the 90-day period described in paragraph (1) has expired. In such case,
12 an application submitted pursuant to the notice may be approved for disposal for use to assist
13 the homeless only if the property remains available for use to assist the homeless. If the
14 property remains available for use to assist the homeless, the use to assist the homeless shall be
15 given the same priority of consideration as a public health use under section 484(k) of title 40,
16 United States Code.";

17 (10) in subsection (e)(3), by inserting the following sentence immediately after the first
18 sentence: "The Secretary of Health and Human Services shall give a preference to applications
19 that contain a certification that their proposal is consistent with the local Continuum of Care
20 strategy for homeless assistance.";

21 (11) in subsection (f)(3)(A), by adding at the end the following:

1 "Such priority of consideration shall apply only with respect to properties as to which the
2 written notice of intent to apply for a property set forth in subsection (d)(2) of this section is
3 received by the Secretary of Health and Human Services within the 90-day period described in
4 section (d)(1).";

5 (12) in subsection (h) heading, by striking "Applicability to Property under Base
6 Closure Process" and inserting "Exemptions"; and

7 (13) in subsection (h), by adding the following new paragraph at the end:

8 "(3) The provisions of this section shall not apply to buildings and property that
9 are—

10 (A) in a secured area for national defense purposes; or

11 (B) inaccessible by road and can be reached only by crossing private
12 property.".

13 (b) Within 30 days of the date of enactment of this section, the Secretary of Housing
14 and Urban Development shall survey landholding agencies to determine whether the properties
15 included in the last comprehensive list of properties published pursuant to section 501(c)(1)(A)
16 of the McKinney-Vento Homeless Assistance Act remain available for application for use to
17 assist homeless. The Secretary shall publish in the Federal Register a list of all such properties.
18 Such properties shall remain available for application for use to assist the homeless in
19 accordance with sections 501(d) and 501(e) of such Act (as amended by subsection (a) of this
20 section) as if such properties had been published under section 501(c)(1)(A)(ii) of such Act.

21 **SUBTITLE E - MISCELLANEOUS**

1 **Sec. 341. Scope and construction.**

2 The authorities granted by this Title to the heads of Federal agencies for the management of real and
3 personal property and the conduct of transactions involving such property, including the disposition of
4 the proceeds therefrom, shall be in addition to, and not in lieu of, any authorities provided in any law
5 existing on the date of enactment hereof. Except as expressly provided herein, nothing in this Title shall
6 be construed to repeal or supersede any such authorities.

7 **Sec. 342. Severability.**

8 Although this Title is intended to be integrated legislation, should any portion or provision of this Title be
9 found to be invalid or otherwise unenforceable by a court of competent jurisdiction, such portion or
10 portions of this Title shall be considered independent and severable for all other provisions of this Title
11 and such invalidity shall not, by itself, invalidate any other provisions of this Title, which remaining
12 provisions shall have the full force and effect of law.

13 **Sec. 343. No Waiver.**

14 Nothing in this Title should be construed to limit or waive any right, remedy, immunity, or jurisdiction of
15 any Federal agency or any claim, judgement, lien, or benefit due the United States of America.

16 **Sec. 344. Agency Discretion.**

17 The provisions of this Title, including those authorizing the exercise of agency discretion, are not
18 intended to, and do not, create or enlarge any substantive or procedural rights or causes of action
19 against the United States, its agencies, its officers, or any person.

20 **Sec. 345. Effective date.**

21 This Title and the amendments made by its provisions shall be effective upon enactment of this Title

1 except as otherwise specifically provided for herein.

2 **Sec. 346. Report of the Comptroller General.**

3 Not later than five years after the date of enactment of this Title, the Comptroller General of the United
4 States shall submit to the Congress a report on the use by Federal landholding agencies of the
5 authorities provided by this Title.